Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JOHN P. FARQUHAR, et al.,
Petitioners,

vs.

CITY OF MANHATTAN BEACH, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Do the facts of this case raise an inference under the "Inadequate State Ground" doctrine that California's Supreme Court (in a 4 to 3 decision contradicting and questioning its own prior precedents) attempted to evade the Just Compensation Clause in order to help a city acquire private property for public park purposes at less than fair market value?

PARTIES TO THE PROCEEDING

Petitioners Duncan Abbott; Tirey C. Abbott; Marjorie M. Adams; Walter Eric Peck Anderson; Walter L. Anderson; Catherine Frances Barringer; Paul M. Barringer; Thomas H. Barringer; Mary Elizabeth Bettinger; Mary Boyd; Anita Brown; Irene Burdick; Collette Regan; C.H. Carruthers; Peter Carruthers; Dan McF. Chandler, Jr.; Helene L. Chandler; Thomas A. Chandler; Children's Home Society of California; Mary Hazard Conrad; Cameron Covey; Elizabeth Dakin; Michelle DiMarco; Candace Ducato; Laura M. Eaton; Alice Edwards; Patricia Edwards; Peter Edwards; William A. Edwards, III; Sharen Effertz; Renelle Eiland; Harriet Farley; John P. Farquhar; Rosemary Ferguson; Douglas M. Hamilton; Richard C. Hamilton; James C. Hamilton; Charles W.B. Hazard; Oliver Hazard; Thomas P. Hazard, Jr.; Albert Hunt; Charles A. Hunt; Cheri Lee Scott; Ricardo B. Johnson; Marjorie Munn Knapp; George A. Little; Heartie A. Look; Holly Luke; Betty Jane Mallery; Clarke Mallery, Jr.; Clarke Mallery, Jr.; Lisa Dawn Anderson Manfredonia; Stanley Alan Maw; McKinley Home Foundation; Dr. Donald W. Mitchell; Sidney P. Mitchell, M.D.; John R. Munn, Jr.; Marjorie Munn Knapp; Mark S. Munn; Patricia McKelvy Munn; Orthopaedic Hospital Foundation; Diana Palmer; Elizabeth Parish; Erika Plack; Ann Randall; Anne Hazard Richardson; Nancy Vail C. Rorty; Marco Giulio Sammartini; Teodora Sammartini; Peter G. Severance; William R. Severance, Jr.; Richard A. Sheffield; Edith Smith; Gail Townend; University of Southern California; Mr. Hugh F.R. Vail, III; Albert E. Van Court, Jr.; Isabel P. Whitt; Charles T. Wilder (Petitioners) were Plaintiffs and Real Parties in Interest below. None of the

corporate petitioners has a parent or non-wholly owned subsidiary. Respondents (Defendants and Petitioners below) are the City of Manhattan Beach, a municipal corporation, and Atchison, Topeka and Santa Fe Railway Company.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully seek certiorari to review the judgment of the Supreme Court of the State of California entered in this case.

OPINIONS BELOW

The April 25, 1996 published decision of the Supreme Court of the State of California, reported at 13 Cal. 4th 232, 52 Cal. Rptr. 2d 82 914 P.2d 160, is reproduced herein as Petitioners' Appendix A1-57. The June 19, 1996 order of the same court denying rehearing appears as Petitioners' Appendix B1-3.

The June 16, 1994 published decision of the California Court of Appeal, Second Appellate District, Division 4, is reproduced herein as Petitioners' Appendix C1-17. The July 18, 1994, order modifying the opinion of the California Court of Appeal, Second Appellate District, Division 4, is reproduced herein as Petitioners' Appendix D1-3.

The December 23, 1992 Statement of Decision of the Superior Court of the State of California in this same action, is reproduced herein as Petitioners' Appendix E1-11.

JURISDICTION

Respondent City of Manhattan Beach ("the City") sought to acquire, for public park purposes, the fee interest in a privately owned, abandoned railroad right of way by paying Respondent Atchison Topeka and Santa Fe Railway Company ("Santa Fe") (rather than Petitioners as the true owners of the property upon its

abandonment by the railroad) at least $3.4 million less than fair market value in exchange for Santa Fe's quitclaim deed. Petitioners, as the true owners, filed suit in inverse condemnation, among other things, seeking just compensation for the taking of their interest in the property.

In a 4 to 3 decision (App. A; 13 Cal. 4th 232), the California Supreme Court construed the original 1888 Deed (quitclaiming "the right of way for the construction, maintenance and operation of a steam railroad, upon over and along" certain land) from Petitioners' predecessors to the railroad as a conveyance of the fee rather than an easement, despite the Court's own contrary precedents, despite the contrary opinions of the trial court (App. E) and the Court of Appeal (App. C, D) following those precedents, despite contrary state statutes, despite the weight of a century of railroad cases across the country interpreting such deeds, and despite prior admissions by Santa Fe and the City that Santa Fe held only an easement.

Based on the above facts, this Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) because this petition seeks review of a final judgment rendered by the highest court of the State of California, and because Petitioners claim Respondents' conduct gave rise to a cause of action in inverse condemnation, depriving Petitioners of their right to just compensation under the United States Constitution as the true owners of the subject former right of way property now that it has been abandoned. The California Supreme Court's attempt to base its decision on purported state grounds misfires in

light of the "Inadequate State Ground" doctrine described below.

On April 25, 1996, the California Supreme Court filed the opinion (App. A) challenged in this petition. On June 19, 1996, the California Supreme court denied Petitioners' timely petition for rehearing. App. B. This petition for writ of certiorari timely followed within 90 days thereafter.

CONSTITUTIONAL PROVISIONS

Fifth Amendment, United States Constitution:

> "nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment, United States Constitution:

> "Section 1 . . . nor shall any State deprive any person of life, liberty or property without due process of law."

STATEMENT OF THE CASE

This action concerns former railroad right of way property extending north to south through the center of the city of Manhattan Beach, California.

A. The 1888 Deed.

Charles Silent acquired 4500 acres in what is now Manhattan Beach and Hermosa Beach California. In

1887, Silent conveyed his entire interest in the 4500 acres to the Redondo Land Company, a corporation in which Silent was an incorporator, shareholder and director. Silent took back a purchase money mortgage, which he ultimately assigned as collateral to his personal bank. (Real Parties' Exhibits ("RE") Deed, Tab 6; Map, RE Tab 7; Santa Fe's Supplemental Appendix, Tabs 30, 31.)[1]

By 1888, a predecessor railroad of Respondent Atchison, Topeka & Santa Fe Railway Company ("Santa Fe") had already constructed railroad tracks splitting the 4500 acres in two. Under California law, the railroad's action without formal color of title gave it nothing more than a prescriptive easement confined to the land occupied by the tracks. That easement was subject to ouster at any time. (RE Tab 8, p. 23 lines 11-12; RE Tab 12.)

In October 1888, the railroad obtained the subject 1888 Deed from the Redondo Land Company and Charles Silent. The terms of the 1888 Deed are set forth at length in Justice Mosk's dissenting opinion. App. A28-30; 13 Cal. 4th at 250-52. (The majority chose to render its opinion without quoting the terms of the Deed).

The 1888 Deed quitclaimed "the right of way for the construction, maintenance and operation of a steam

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[1] As this case was an extraordinary writ proceeding, not an appeal, there is no Clerk's Transcript. The parties each filed exhibits identified in the verified allegations of their pleadings.

railroad, upon over and along the . . . tract and parcel of land." The 1888 Deed had advantages over the existing prescriptive easement. It broadened the easement to an overall width of 100 feet. It made the easement permanent unless abandoned by the railroad. It quitclaimed Silent's equitable interest as mortgagee.

At the time of the 1888 Deed, both the decisions of the California Supreme Court and the decisions of this United States Supreme Court construed deeds of railroad right of way to convey only an easement, not the fee. In addition, since 1872, sixteen years before the 1888 Deed, California Civil Code sections 801 and 802 defined "the right of way" as one of "the burdens or servitudes upon land" that are called "easements."

The 1888 Deed was not a form, printed Deed. Santa Fe retained the original typewritten deed in its files and produced it during the course of this suit. The Deed on its face is carefully drafted, containing specific provisions over which the parties obviously bargained. (RE Tab 9.)

In light of the state of the reported cases and the statutes of the time, the parties to the 1888 Deed, if they intended a fee conveyance to the railroad, would *never* have included the "right of way over land" language in the granting clause of the Deed. That language was pregnant with legal meaning. The cases and statutes of the time construed that language as the conveyance of an easement, not the fee.

B. Subsequent Extrinsic Evidence and Interpretations of the 1888 Deed as Conveying Only an Easement.

In 1897, the Redondo Land Company conveyed to one Blanton Duncan a piece of the 4500 acres that included that portion of the subject right of way (the southernmost tip) in Hermosa Beach, California. The deed to Duncan clearly evidences an intent to convey the underlying fee. The Redondo Land Company could not have conveyed the fee to Duncan, if it had already conveyed the fee to the railroad in 1888. App. E6; RE Tabs 16-18.[2]

The 1888 Deed refers to a side track located "on the right of way" of the railroad. In 1897, the railroad signed an unrecorded indenture[3] (also signed by the

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[2] The majority inaccurately stated that, if a portion of the fee was conveyed to Duncan, the Redondo Land Company would have been left with two pieces divided in the middle by the portion sold to Duncan. App. A25; 13 Cal. 4th at 248-49. In fact, the Duncan piece was on the southernmost tip of the subject right of way. It did not divide the remainder. The California majority nevertheless refused to correct this blatant factual error, even when Petitioners pointed it out on rehearing.

[3] The Redondo Beach Railway was the grantor in the 1888 Deed while the Southern California Railway was a party to the unrecorded indenture. Both were captive affiliates of Santa Fe. Author Philip Serpico described the relationship between Redondo Beach Railway and Southern California Railway as follows:

(continued...)

Redondo Land Company) which recited that this side track was located "on the lands" of the Redondo Land Company. (RE Tab 23.) Therefore, the side track was located "on the right of way" of the railroad but "on the lands" of the Redondo Land Company, further evidencing that the parties to the 1888 Deed intended to convey an easement only.

In 1901, the Redondo Land Company and its shareholders hoped to sell portions of the 4500 acres. They sued some potential Mexican land grant claimants to quiet title. Santa Fe was not served or named as a party and the subject right of way property was expressly excepted from the description of the land covered in the lawsuit contained in the complaint. That description, with the exception, was carried over into the default judgment quieting title, when the land grant claimants chose not to appear and contest title. The railroad was

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[3](...continued)

"On April 22, 1888, the Redondo Beach Railway Company (a construction company only) was incorporated, The reader should note, however, that this company had been in operation since one week prior and manned by Santa Fe forces. But, for accounting reasons, this line operated as a separate identity from Santa Fe's California Southern and California Central. . . . The (Redondo Beach Railway Company) held its last director's meeting on October 9, 1889, at which it voted to consolidate its capital stock . . . debts, property assets and franchises with other Santa Fe lines in California to form the Southern California Railway Company." Serpico, *Santa Fe Route To The Pacific* (1988) at 46.

not a party to the action, nor was title to the subject property ever put in issue. (RE Tab 26.)

In 1903, the Redondo Land Company filed an action to dissolve. (Real Parties' Judicial Notice Appendix ("RJN"), Tab 1.) The files pertaining to this action were not discovered until a week prior to oral argument before the Court of Appeal. Under California law at the time, all assets of a corporation were disposed of in equal shares to its shareholders by operation of law automatically upon dissolution. See *Havenmeyer v. Superior Court* 84 Cal. 327 (1890). The dissolution file does not contain an inventory of assets. The complaint does not state that the corporation has already conveyed its assets. However, the final, default dissolution decree (entered 40 days after the complaint was filed) states that "all of the property of said corporation has been disposed of." (RJN, Tab 1 at 12-13.)

In 1954, the City tried to assess Santa Fe, as the owner of the subject right of way, for its share of various local capital improvements. Santa Fe challenged the assessment in court, arguing that it owned only an easement interest that would terminate if it abandoned its line over the property. The City ultimately agreed and findings of fact, conclusions of law and judgment were entered accordingly.

In 1982, Santa Fe applied to abandon its line over the subject property. Its corporate general counsel formally represented to the Interstate Commerce Commission and the California Coastal Commission that the railroad held only an easement over the subject property, while holding a fee interest on properties to

the north and south obtained separately from the subject 1888 Deed. (RE Tabs 33-35.)

In 1986, Santa Fe completed the abandonment by removing its tracks from the subject property. (RE Tab 40.)

C. The City Sought to Avoid Paying Just Compensation by Dealing with Santa Fe.

Also in 1986, Santa Fe and Respondent City of Manhattan Beach ("the City") entered into a "Park Acquisition Agreement." Under this Agreement, the City agreed to pay Santa Fe consideration valued at $5 million in return for the railroad's quitclaim of all but 2.3 acres of the subject property. The two agreed to wait five years (the adverse possession period) before suing to quiet title to the subject property. The railroad agreed to indemnify the City up to $5 million (plus attorneys fees) if the true owners of the property appeared. The railroad had previously spent $45,000 in an unsuccessful attempt to get a title company to insure it as fee owner of the property. (RE Tabs 36-38.)

The City had obtained an appraisal of the property it wanted to buy for its park at $8.4 million. By entering into the "Park Acquisition Agreement" with Santa Fe, it could potentially acquire the subject property for at least $3.4 million less than its fair market value. (RE Tab 43 at 246, 250.)

D. The Petitioners Seek Just Compensation.

This lawsuit was filed on December 31, 1987 by Petitioners. All except two of Petitioners are persons in the chain of descent and distribution from the shareholders of the Redondo Land Company. The remaining two (John P. Farquhar and Ricardo B. Johnson) are amateur heir hunters, descended from the two families that originally owned what is now Santa Monica, California, who located the other Petitioners and agreed to finance this lawsuit in exchange for a share of the recovery.

From the beginning of the case, Petitioners contended, in the alternative, that the actions of Respondents constituted an inverse condemnation of their fee ownership interest in the subject property. Respondents, in fact, argued that inverse condemnation was Petitioners' only remedy and that Petitioners were estopped to contend that they were entitled to go back into possession of the subject property. App. E10.

Petitioners prevailed at trial in the first (title and inverse condemnation) phase of this trifurcated case, on all of the property except for that portion conveyed to Duncan. Respondents sought extraordinary writ relief to set aside the decision in the first phase of the case. Initially, the Court of Appeal summarily denied the petition for extraordinary mandate relief. Respondents then sought intervention from the California Supreme Court. The Court ordered the Court of Appeal to conduct a full review of the case. After full briefing and oral argument, the Court of Appeal still ruled in favor of

Petitioners. App. C, D. Respondents again sought California Supreme Court review, which was granted.

In the subject 4-3 decision, the California Supreme Court reversed the Court of Appeal and the trial court, and ruled that the original 1888 Deed conveyed only an easement. App. A; 13 Cal. 4th 232. Two members of the majority announced their retirement before the decision was published (the author Justice Arabian and former Chief Justice Lucas). During oral argument, Justice Arabian openly revealed his sympathy for the City and his desire to help the City by drafting a decision which would allow the City to keep its park without paying more.

Petitioners' request for rehearing (after the retirement of two members of the majority) was denied. App. B.

REASONS WHY THE WRIT SHOULD ISSUE

A. Under the "Inadequate State Ground" Doctrine, Where Circumstances Give Rise to an Inference that the State Court is Guilty of an Evasion - an Interpretation of State Law Designed to Deprive a Litigant of a Federal Right - the United States Supreme Court Has the Power to Grant Certiorari.

This Court has traditionally declined to review state court decisions that rest upon a state ground independent of a federal question in the case and adequate to support the judgment. See *Fox Film Corp. v. Muller*, 296 U.S. 207 (1935).

However, an exception exists where the state ground is inadequate to support the judgment so as to stand in the way of the asserted federal claim. See Hill, *The Inadequate State Ground*, 65 Colum. L. Rev. 943 (1965); Note, *The Untenable Nonfederal Ground in the Supreme Court*, 74 Harv. L. Rev. 1375 (1961). Under these circumstances, this Court may take jurisdiction to review the adequacy of the state court decision to decide whether the state court decision on a state ground effectively denies the litigant its claimed federal right. *Rogers v. Alabama*, 192 U.S. 226 (1904). This Court's power to reinvestigate state law is a necessary incident of its power to review federal cases. *Ward v. Board of County Commissioners*, 253 U.S. 17 (1920).

The issue here is whether just compensation is owed to Petitioners despite the California Supreme Court's decision that Petitioners never had the right they claimed - fee ownership of the subject property.

In cases involving the alleged impairment of a property right under the United States Constitution, this Court has jurisdiction to revisit a state court decision that an asserted property right never came into existence, unless the circumstances indicate that the state court decision "rests upon a fair or substantial basis" or has "fair support." *Broad River Power Co. v. South Carolina*, 281 U.S. 537 (1930); *see also Demorest v. City Bank Farmers Trust Co.*, 321 U.S. 36 (1944); *Fox River Paper Co. v. Railroad Comm'n of Wisconsin*, 274 U.S. 651 (1927); Hill, *The Inadequate State Ground*, 65 Colum. L. Rev. 943 (1965).

Consistency with prior state authority is a key factor this Court considers in determining whether a state ground is adequate. "If a state court decides contrary to its own well-established precedents . . ., a finding of intentional evasion of or discrimination against federal rights may convincingly be made." Note, *The Untenable Nonfederal Ground in the Supreme Court*, 74 Harv. L. Rev. 1375 (1961).

B. The Facts of This Case Give Rise to More Than an Inference of an Evasion of the Right to Just Compensation.

1. The California Supreme Court's Decision Was Inconsistent with its *Own* Existing Precedents and Over a Century of Cases Across the Country Interpreting Railroad "Right of Way" Deeds to Convey Only Easements.

This Court has jurisdiction to review a state court judgment decided contrary to established precedents of that state. *Fox River Paper Co. v. Railroad Comm'n*, 274 U.S. 651 (1927).

The California majority's decision is contrary to established precedent.

The problem of how to construe railroad right of way deeds is not new. Over a century of reported decisions across the country have construed these deeds. E.g., Annot., *Deed to Railroad Company as Conveying Fee or Easement* (1966) 6 A.L.R.3d 973. To justify its decision, however, the majority found those precedents to be "in hopeless conflict." App. A13; 13 Cal. 4th at 241, n.8. That is not true. There has been remarkable agreement on two principles of construction.

First, a distinction has been drawn between deeds conveying (in their granting clauses) "right of way over land," construed to transfer easements only, and deeds of

"land . . . for right of way," construed to transfer the fee. *There is not a single reported case outside of Florida construing a deed of "right of way over land" as the conveyance of a fee.* Real Parties repeatedly challenged the City and Santa Fe to find such a case. They could not.

In *Parks v. Gates* 186 Cal. 151 (1921) the California Supreme Court recognized the distinction, and stated that: "There is a vast difference between a grant for purposes of 'right of way' for a road and a grant of land 'to be used for a road.' The latter grant may be entirely consistent with the conveyance of a fee-simple title, as a road may be maintained as readily on land held in fee as under an easement, but the grant of land as a right of way recognizes nothing but an easement." *Parks* was followed by the California Supreme Court in *Highland Realty Co. v. City of San Rafael,* 46 Cal. 2d 669 (1956).

The subject 1888 Deed is clearly a deed of "right of way over land" not a deed of "land for right of way." Nevertheless, the California majority in this case, despite its own prior precedents discussed above, ignored the distinction and relied instead on cases involving deeds of "land for right of way" rather than deeds of "right of way over land." The majority opinion is riddled with cases distinguishable on this ground. See App. A11-13; 13 Cal. 4th at 240-41, nn.7-8. If allowed to stand, the California majority's opinion will be the *only* case, outside of Florida, where a deed of "right of way over land" was construed to convey the fee. It will also be the only case, period, where a trial court's determination

that such a deed transferred an easement was overturned on appeal.

Second, California and many other jurisdictions follow the general rule that railroad, street and other "right of way" deeds are usually construed to convey easements, *even where the deeds have language otherwise apt to convey a fee*. This rule applies in cases where a deed mixes "right of way" and "land" terminology together, or where a deed does not contain the classic "right of way over land" formulation in its granting clause to clearly indicate the transfer of an easement.

The California Supreme Court's own cases invoking the general rule include *Highland Realty Co. v. City of San Rafael, supra*, 46 Cal. 2d 669; *People v. Thompson* 43 Cal. 2d 13 (1954); and *Coon v. Sonoma Magnesite Co.* 182 Cal. 597 (1920). California Courts of Appeal have followed suit. E.g., *Concord & Bay Point Land Co. v. City of Concord* 229 Cal. App. 3d 289 (1991) [although rule recognized, deed construed as a fee deed due to facts taking the case outside the rule]; *Warren v. Atchison, Topeka & Santa Fe Railway Co.* 19 Cal. App. 3d 24 (1971); *Johnson v. Ocean Shore Railroad Company,* 16 Cal. App. 3d 429 (1971); and *Ocean Shore Railroad Co. v. Doelger,* 127 Cal. App. 2d 392 (1954).

The rule is also recognized in recent cases from other jurisdictions. *See Penn Central Corp. v. U.S. Railroad Vest Corp.* 955 F.2d 1158 (7th Cir. Ind. 1992) [citing *Highland*]; *Eunice v. Sunland Properties, Inc.* (La. Ct. App. 3d Cir. 1992) 597 So. 2d 1198; *Macerich Real Estate Co. v. City of Ames* 433 N.W. 2d 726 (Iowa 1988);

and *Brown v. Penn Central Corp.* 510 N.E. 2d 641 (Ind. 1987).

Only a single California *lower court* case has questioned the existence or validity of this general rule. In *Machado v. Southern Pacific Transportation Co.* 233 Cal. App. 3d 347 (1991), a case never reviewed by the California Supreme Court, the Court of Appeal in a footnote dictum insisted, despite the authorities discussed above, that "no California decision has created such a rule of law or construction or presumption." *Id.*, at 355-356.

The Court of Appeal and the trial court in this case understandably could not reconcile the *Machado* dicta with the state Supreme Court's own, prior statements recognizing the general rule.[4] The *Machado* court overstepped its proper role. Inferior courts "must accept the law declared by courts of superior jurisdiction. It is not their function to overrule decisions of a higher court." *Auto Equity Sales, Inc. v. Superior Court* 57 Cal. 2d 450 (1962).

If anything demonstrates the unprecedented nature of the majority's decision, it is the fact that the majority questioned its own prior precedents recognizing this general rule of construction by citing the lower court

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[4] The *Machado* deed was a deed of land for right of way not a deed or right of way over land. It is, therefore, distinguishable from the deed in this case. Furthermore, as discussed in the Court of Appeals' decision in this case (App. C8-9), the subject 1888 Deed conveyed an easement even under the criteria recognized and discussed in *Machado*.

dictum in *Machado*. The California majority artfully sidestepped its own precedents and found it "unnecessary to assess whether it remains the 'general rule' that the grant of a railroad right of way conveys only an easement (But see *Machado v. Southern Pacific Transportation Co.* 233 Cal. App. 3d 347 (1991).)". App. A11; 13 Cal. 4th at 240, n.7.

The majority also tried to justify its decision and avoid review by characterizing it as a factual issue of intent. The Court found an intent to convey a fee based on essentially two reasons.

First, the Court found that use of the term "quitclaim" in conveying the right of way "substantially reflects" the parties' intention to convey fee title, despite the fact that the 1888 Deed limits the interest quitclaimed to a "right of way." App. A9; 13 Cal. 4th at 239. While easement interests conveyed by quitclaim deeds have yet to appear in California cases, they are abundant in other jurisdictions. See *Estate of Rockafellow v. Lihs*, 494 N.W. 2d 734 (Iowa App. 1992) [quitclaim of "right-of-way" "for the purpose of constructing a railroad thereon" "over and through (a specified) tract" held to be an easement deed]; *G.M. Morris Boat Co., Inc. v. Bishop*, 631 S.W. 2d 84 (Mo. App. 1982) [quitclaim of three-cornered tract of land with provision in habendum stating "for the purpose of a right of way" held to be conveyance of easement only]; *Veach v. Culp*, 92 Wash. 2d 570 (1979) [quitclaim of "land . . . to wit: A right-of-way" conveyed easement]; *Pacific Iron Works v. Bryant Lumber & Shingle Mill Co.*, 60 Wash. 502 (1910) [quitclaim deed of right of way for railroad purposes which would "revert" if not "used for a

railway" construed as conveyance of easement even though containing some language which "might imply" fee conveyance]; *Cincinnati, I., St. L. & C. Ry. Co. v. Geisel*, 119 Ind. 77 (1889) [quitclaim of "right of way" "through" land transfers only an easement]. As Justice Mosk notes in his dissenting opinion, the majority confused the form of the conveyance with the interest being conveyed. App. A39; 13 Cal. 4th at 257.

Second, the Court pointed to the 1901 quiet title action and the 1903 dissolution action as extrinsic evidence of the parties' intent to transfer a fee interest. App. A22-3; 13 Cal. 4th at 247. However, neither action even addressed title to the property, and the railroad was not a party to either action.

Furthermore, the Court ignored the preponderance of extrinsic evidence that *supports* the conveyance of an easement, including the railroad's *own* interpretations of the 1888 Deed (discussed below in subsection 3 of this Petition.)

The California majority jettisoned its own settled rules of construction in order to characterize the precedents as "hopelessly in conflict" so that it could then treat the facts of this case as sui generis and so that it could "construe" the subject 1888 Deed according to the particular result it wanted to achieve, one allowing the City to acquire its park at a bargain price. These facts alone raise an inference of an "evasion." However, there is much more.

2. The Majority's Decision Ignored the Context of the Subject 1888 Deed and the Case and Statutory Law of the Time.

The California majority does not, and cannot, satisfactorily explain why the parties to the 1888 Deed included the "right of way over land" language in the first place. If they intended to transfer a fee, this is the last language they should have put in their Deed. This language was pregnant with legal meaning. It is true that the 1888 Deed uses the term "right of way" rather than "easement." However, it hardly could do otherwise in light of the legal precedents and statutes of the time.

Twenty-one years before the 1888 Deed, the California Supreme Court stated, in *Appeal of the North Beach and Mission Railroad Co. in the Matter of Widening Kearny Street* 32 Cal. 499, 506 (1867), that a deed of "right of way whereon to construct and lay down a railway track" on a given street conveyed "at least, an easement in said street." The Court also quoted out-of-state authority as follows: "'Is not the right of a railroad company, if it has a right to construct its track upon the road also an easement? This cannot be denied . . . .'" *Id.*, at 510.

Any questions raised by this "at least an easement" statement were erased by the California Legislature in 1872 (sixteen years before the 1888 Deed) with the passage of Civil Code sections 801 and 802, which defined "the right-of-way" as one of the "burdens or servitudes upon land" that are "called easements." Referring to these statutes, the California Supreme

Court stated only six years ago that: "A (railroad) right-of-way is a real property right--the easement on which a line is built." *Napa Valley Wine Train, Inc. v. Public Utilities Commission* 50 Cal. 3d 370 (1990).

Three years before the 1888 Deed, the United States Supreme Court, in *East Alabama Railroad Co. v. Doe* 114 U.S. 340 (1885), held that deeds of railroad "right of way" "forever, in fee simple" conveyed merely easements in the land "to enable (the railroad) to discharge its function of making and maintaining a public highway, the fee of the soil remaining in the grantor." *Id.*, 114 U.S. at 350-51.

Finally, in *Kripp v. Curtis* 71 Cal. 62 (1886), the California Supreme Court stated that a right of way was "an easement which does not necessarily divest the owner of the fee of the land, and, for all other purposes except the servitude or use as a way, he owns it . . . ." *Id.*, 71 Cal. at 63.

The parties to the 1888 Deed drafted it within the context of the legal rules of the time and the Deed should be interpreted accordingly. In that context, using the terminology "right of way over land" in the granting clause was certainly *not* the way to indicate a fee transfer under the case and statutory law of the time.

Furthermore, the 1888 Deed was not a form deed. Its provisions were carefully drafted. Even the majority concedes that the parties dealt specifically with

the problem raised by the Charles Silent mortgage,[5] the problem of warehouse space and the problem of how to protect adjacent land and cattle from trains operating on or water flowing off of the roadbed of the tracks. The parties specifically provided for 200 feet of warehouse space, not less than four track crossings and delineated (by metes and bounds description and total acreage) the precise location of the land underlying the right of way conveyed.

According to the majority, however, the parties to the 1888 Deed (a sophisticated land development company and one of the railroads that "dominated the landscape" of the time) nevertheless, included *easement* language in their *fee* deed. Under the majority's view, we must assume (a) either that these sophisticated parties and their attorneys were not aware of the specialized meaning that the term "right of way over land" had under existing case law and statutes; (b) that they were sloppy about drafting the granting clause of the Deed even though they were not sloppy about the other clauses described above; or (c) that they jointly

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[5] The majority's analysis (App. A9-10, 20; 13 Cal. 4th at 239-40, n.5, 245.) of the reasons why Silent was included as a grantor in the 1888 Deed demonstrates no inconsistency with an easement conveyance. Silent held a mortgage to 4500 acres he sold to the Redondo Land Company, not just the 23 plus acres underlying the subject right of way. Also, he was a shareholder of the Land Company. The railroad understandably wanted its permanent easement protected from foreclosure by Silent. *If* it had bargained for and obtained a fee, it would have wanted the same protection. Including Silent as a grantor is consistent then with either an easement or fee construction and is, therefore, not conclusive either way.

had some sort of clairvoyant premonition that the California Supreme Court would find their true intent a century later!

The majority's opinion also does not come to grips with the fact that it would have been so easy to draft a clear, fee deed *if the parties intended a fee transfer.* The parties could have quitclaimed the "land" or "all right, title and interest in the land." Instead, they quitclaimed "right of way over land." When the Redondo Land Company wanted to quitclaim all right, title and interest in a given piece of property, it said so. The Company was a party to two other quitclaim deeds in the record (of other property) where *all* right, title and interest was expressly transferred. (RE Tabs 24 and 25.) The majority's argument reads this "right of way" language right out of the 1888 Deed entirely. However, "'The phrase "for railroad right of way" cannot be rejected as surplusage, for it is presumed that no clause or word in a deed was used without meaning or intent.'" *Ocean Shore Railroad Co. v. Doelger, supra,* 127 Cal. App. 2d 392.

The majority simply had a different agenda. It did not want to interpret the 1888 Deed in context according to original intent. It did not want to see the simpler and more logical explanation, i.e. that the railroad negotiated and accepted the right of way language because it bargained for an easement and nothing more.

3. The California Supreme Court Ignored the Evidence of the Original Parties' Own Interpretation of the 1888 Deed.

The California majority was so unwilling to construe the 1888 Deed in accordance with the intent of the parties to it that it ignored powerful extrinsic evidence showing how the original parties to the 1888 Deed themselves interpreted it.

First, in 1897 the grantor of the 1888 Deed, the Redondo Land Company, conveyed a piece of the underlying fee to Duncan. It could not have done so, if it had already conveyed the fee to the railroad nine years earlier.

Second, the railroad itself consistently construed its own interest as an easement, at least until the City dangled $5 million in front of it in 1987.

In the unrecorded 1897 indenture, the railroad signed a recital stating that part of its track was "on the lands" of the Redondo Land Company. In 1954 and 1982, the railroad formally told the superior court, the ICC and the Coastal Commission that it held only an easement.

The California Supreme Court should have adopted the "practical construction" repeatedly given the Deed by the original parties to it. (*People v. Ocean Shore Railroad, Inc.*, 32 Cal. 2d 406 (1948)). Instead, the Court dismissed this powerful evidence as a mere "legal conclusion." App. A26; 13 Cal. 4th at 249.

4. The California Supreme Court Evaded Its Duties by Purporting to Make a Decision Applicable Only to the So-Called Peculiar Facts of This Single Case.

The California Supreme Court may grant review only to resolve conflict among lower court decisions or to settle important questions of law. Cal. Rules of Court, Rule 29(a). In this case, the California majority achieved neither objective, because it had a particular result in mind, not a question of law that it wanted to settle. The majority opinion goes out of its way to avoid settling anything. It makes every "right of way" deed sui generis and calls into question the Court's own prior decisions (which apparently, in the majority's mind, settled nothing.)

By thus straining to achieve a particular, narrow result in this case that would favor the City, the California majority failed to fulfill its prescribed role of settling important questions of law, further strengthening the inference of evasion in this case.

5. The Author of the Majority's Opinion Openly Announced at Oral Argument His Sympathy with the City and His Desire to Craft a Ruling that Would Allow the City to Retain its Park Without Paying Petitioners.

Oral arguments before the California Supreme Court are taped but not transcribed. The tape is

"unofficial" and is not part of the "official" court record. Petitioners are informed that copies are not normally made but will be made if this Court so requests. Petitioners are also informed by Court personnel that the tapes are not high quality reproductions of argument and that they are maintained primarily to assist court staff who, for whatever reason, were not present during argument.

The oral argument in this case is important because it clearly raised an inference of evasion. Justice Arabian openly declared his sympathy for Respondent City and his desire to craft a ruling that would allow the City to retain its park without paying Petitioners. He

accused Petitioners of heir hunting[6] and barratry[7].

With all due respect, the statements of the author of the Opinion at oral argument may constitute the strongest evidence raising an inference of the Court's intent to interpret California law to deprive Petitioners of their right to just compensation.

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[6] This accusation was correct as to Petitioners Farquhar and Johnson. However, "heir hunting" is not illegal in California. *Gerhard v. Stephens*, 68 Cal. 2d 864 (1968). For example, there are 13 reported cases in California involving one L.C. Faus who litigated title to railroad rights of way during an earlier wave of abandonments. Faus apparently did for a living what Petitioners Farquhar and Johnson did in this case for fun on an amateur basis. Farquhar is a descendant of John P. Jones (who at one time owned an undivided interest in 75% of what is now Santa Monica) and Johnson is a descendant of Arcadia Bandini de Baker (who, as the widow of Baker, succeeded to the remaining 25%). Both first pursued the reversionary rights held by their own families before "heir hunting" on an amateur basis for others. They are only two of a group of over 80 plaintiffs, which includes a university, a home for boys, a trust for the care of a wonderful, but mentally retarded adult, several people who are very wealthy and several people who are not. The assistance of heir hunters was necessary due to the financial demands of this lawsuit and the highly fractionalized interests of the true owners. However, the outcome of this case should not have depended upon either the fortuitous fact that Petitioners were assisted by heir hunters *or* the equally fortuitous fact that a City wanted to buy the subject property.

[7] This accusation was *not* correct. California does not recognize champerty or maintenance. It limits barratry to cases where a party is shown to have instituted groundless proceedings three times with malice. Cal. Penal Code §§ 158, 159.

Petitioners, therefore, request that this Court grant certiorari with specific directions to include the tape of oral argument in the record to be certified.

CONCLUSION

Where circumstances give rise to an inference that a state court is guilty of an "evasion," i.e., an interpretation of state law designed to deprive a litigant of a federal right, this Court has never hesitated to invoke the "Inadequate State Ground" doctrine in order to pierce through the ostensible, but inadequate, state grounds and prevent the evasion. This case meets that test.

Petitioners respectfully pray that certiorari be granted, with specific directions to include the tape of oral argument in the record to be certified.

DATED: September 13, 1996

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
APR 25, 1996
Robert Wandruff Clerk

CITY OF MANHATTAN BEACH,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

S032448/S032449

Ct.App. B073333

Los Angeles Super. Ct. No. SW C96713

JOHN P. FARQUHAR et al.,

Real Parties in Interest.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

JOHN P. FARQUHAR et al;

Real Parties in Interest.

-SEE CONCURRING AND
DISSENTING OPINIONS-

Although the era is long past when railroads dominated the landscape as well as the direction of this country's industrial, social, and political fortunes, their presence continues in legal struggles over control and ownership of property previously devoted to rail service. Typically, as in this case, the dispute concerns whether the railroad company acquired only an easement in the land over which its tracks once ran or a fee simple interest it can rightfully convey to others for non-railroad uses. Determining the nature of its tenure requires, in the first instance, careful examination of the language in the original conveyance. If the intent of the parties is clear, that will control. If not, extrinsic evidence may be considered to the extent it informs that intent.

Here, the terms of the deed in question are too ambiguous to conclude with certainty whether the grantor and grantee, predecessors in interest of those

now before this court, intended the railroad company take the property in fee simple or acquire only an easement. Resorting to extrinsic evidence of the grantor's conduct subsequent to the conveyance, we find sufficient indicia that in deeding the property it meant to dispose of its entire interest. Accordingly, the Atchison, Topeka and Santa Fe Railway Company had full legal title to convey to the City of Manhattan Beach, which thus has no obligation to compensate the real parties in interest through eminent domain proceedings, condemnation, or otherwise.

I.

This action seeking quiet title, inverse condemnation, ejectment, and damages commenced almost a decade ago. The predicate facts, however, date back more than a century to 1887 when the Redondo Land Company (the RLC) acquired from Charles Silent approximately 4,500 acres of Southern California property situated primarily in what is now the City of Manhattan Beach (the City). To finance the sale, Silent took back a substantial note secured by a mortgage. Shortly thereafter in 1888, the RLC, predecessor in interest to all but two real parties in interest (the heirs),[1] conveyed a portion of the property to the

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[1] The real parties in interest include John P. Farquhar and Ricardo Bandini Johnson, described as "two hobbyist 'heir hunters,'" as well as more than 80 individuals and institutions purportedly heirs of RLC grantees and successors in interest over the last century. Apparently, Farquhar and Bandini instigated the litigation on behalf of their heirs claiming the cessation of railroad operations terminated any further interest in the property because the railway had acquired only an easement limited to that use and purpose.

Redondo Beach Railway Company (the railway), predecessor in interest to the Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The current controversy concerns the nature of the interest passed by that conveyance.

The deed memorializing the transaction between the parties provided in part that the RLC and Charles Silent "for and in consideration of the sum of one dollar" "remise[d], release[d] and quit-claim[ed]" to the railway "the right of way for the construction, maintenance and operation of a steam railroad, upon[,] over and along the following tract and parcel of land,...and described as follows, to wit, being a strip of land of the uniform width of 100 feet, 50 feet thereof being on each side of and parallel to the center line of location of the Redondo Division of the California Central Railway, over and through the lands of grantors...." The document then set forth a detailed metes and bounds description of a several-mile course meandering through what would become Manhattan Beach and portions of Hermosa Beach. The total acreage constituted "an area of 32.46 acres of land, more or less." The grantors reserved and excepted "a space of 200 feet in length lying next adjacent to and midway between the ends of the side track now constructed upon said right of way and extending to the next adjacent boundary line of said right of way for the full length of said 200 feet."

Certain conditions attached to "this grant": "that the side track now constructed upon said right of way shall be maintained and shall be used as a station to receive and discharge freight; that such convenient crossings, not less than four shall be made and maintained with sufficient cattle guards at such point on said right of way as may be necessary for the full use

and enjoyment of the lands adjoining said right of way, and so as to give access to and from the lands on either side thereof; that such culverts shall be constructed and maintained as may be necessary for the free passage of water across the same, and so located that the lands adjacent to said right of way will not be flooded on account of the roadbed of said railroad forming an embankment...." Noncompliance with any of these conditions would result in a reversion to the grantors and their successors in interest.

The deed concluded with a habendum clause: "To have and to hold all and singular the rights aforesaid unto [the railway] and its assigns and successors forever, subject however to and upon the terms and conditions aforesaid." Both the president of the RLC and Charles Silent signed as grantors.

During the course of its existence over the next 15 years, the RLC entered into various transactions for the sale, option for sale, or partition of its remaining property, which will be discussed in greater detail as they become relevant. In 1897, the RLC, the railway, and one Parvin Wright, who held an option on 463 acres, signed and unrecorded indenture abrogating the reversionary conditions in the original deed as long as the railway maintained a station at Potencia between Los Angeles and Redondo. Unlike the earlier conditions, maintenance of the station did not include a reverter provision.

In 1896, the stockholders initiated partition and distribution of property and other interests of the corporation. To effectuate the process, the RLC conveyed the remainder of its holdings to a trustee, who in turn distributed the land to the stockholders through deeds identifying each parcel by lot number. In 1901,

the RLC also instituted a quiet title action to resolve issues of title concerning Parvin Wright's option and claims by heirs of former Spanish and Mexican grantees. By 1903, RLC had concluded its business and formalized its corporate dissolution through judicial proceedings. The resulting order reflected a finding that "all of the property of said corporation has been disposed of."[2]

The railway and its successors, the last of which was Santa Fe, continued operations until 1982, when all rail activity ceased. Santa Fe leased the property to the City in that year and eventually sold it in 1986. The strip now functions as a transportation corridor through the City with a median park and jogging path lying between two major north-south thoroughfares.

In 1987, the heirs instituted this action against the City and Santa Fe by which they sought to exercise powers of termination allegedly created by the 1888 deed due to abandonment of rail services, to quiet title to the property, and to claim damages for inverse condemnation. The trial court trifurcated the proceedings, first determining the nature of the estate granted by the RLC in the original deed and reserving questions of heirship and damages. In the first phase, the court concluded the RLC had not conveyed a fee simple interest but only an easement, which terminated when Santa Fe discontinued railroad operations. It further found Santa Fe as well as the City liable to the heirs for inverse condemnation.

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[2] Apparently, none of the parties to the present litigation were aware of this dissolution proceeding until shortly before oral argument in the Court of Appeal. The City and Santa Fe requested and were granted judicial notice of the superior court file. We grant their renewed request in this court. (Evid. Code § 452, subd. (d).)

The Court of Appeal summarily denied writ review. On petition for review by the City and Santa Fe, this court transferred the matter with directions to issue an alternative writ. The Court of Appeal upheld the trial court's findings as to both title and liability. With respect to title, the court agreed the terms of the deed itself adequately established the intent of the original parties to convey an easement only; it found relevant extrinsic evidence also supported that conclusion. On the question of Santa Fe's liability, the court reasoned it could be held responsible in damages under a park acquisition agreement entered into in 1986 by which it quitclaimed its interest to the City.

II

We begin our analysis of the parties' legal claims with some of the basic principles of law governing review in these cases:

With deeds as any other contract, "[t]he primary object of all interpretation is to ascertain and carry out the intention of the parties. [Citations.] All the rules of interpretation must be considered and each given its property weight, where necessary, in order to arrive at the true effect of the instrument. [Citation.]" (*Burnett v. Piercy* (1906) 149 Cal.178, 189; Civ. Code, § 1066; see Civ. Code, § 1635 et seq.; Code Civ. Proc., § 1856 et seq.) "Extrinsic evidence is 'admissible to interpret the instrument, but not to give it a meaning to which it is not susceptible' [citations], and it is the instrument itself that must be given effect. [Citations.] It is therefore solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence. Accordingly, 'An appellate court is not bound by a construction of the contract based solely upon the terms of the written

instrument without the aid of evidence [citations], where there is no conflict in the evidence [citations], or a determination has been made upon incompetent evidence [citation].' [Citations.]" (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865-866, fn. omitted.)[3] We shall discuss other rules of construction as they become pertinent.

Beginning with an examination of the terms of the deed, the granting clause states the RLC and Charles Silent "remise, release and quit-claim" to the railway the property in question. "The operative words used, 'release, remise and quitclaim' are the words commonly used in simple quitclaim deeds. [Citation.]" (*Estate of Rose* (1937) 23 Cal.App.2d 686, 688.) "A quitclaim deed transfers whatever present right or interest the grantor has in the property. [Citation.]" (*Westlake v. Silva* (1942) 49 Cal.App.2d 476, 478; *Rosenthal v. Landau* (1949) 90 Cal.App.2d 310, 313; see also 2 Miller & Starr, Current Law of Cal.Real Estate (2d ed. 1989) § 6:12, pp. 503-505; Black's Law Dict. (4th ed. 1968) p. 1417, col. 1 [quitclaim "intended to pass any title, interest, or claim

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[3] In a footnote accompanying this test, the court disapproved language in *Estate of Rule* (1944) 25 Cal.2d 1, 11, to the effect that an appellate court must accept the trial court's interpretation of a written instrument when conflicting legal, rather than factual, inference may be drawn. "The very possibility of . . . conflicting inferences, actually conflicting interpretations, far from relieving the appellate court of the responsibility of interpretation, signalizes the necessity of its assumption of that responsibility.' [Citation.]" (*Parsons v. Bristol Development Co., supra*, 62 Cal.2d at p. 866, fn. 2.) In this case, "there is no conflict in the evidence" (*id.*, at p. 866); therefore, the trial court did not resolve any disputed facts or have occasion to draw inferences therefrom.

which the grantor may have in the premises"].) More specifically, "it has been often decided by this court that a quitclaim deed conveys the absolute fee-simple title if the party executing it had such title [citations]; and therefore such deed does not imply any precedent interest or easement in the releasee, or any admission of the releasor to that effect." (*Spaulding v. Bradley* (1889) 79 Cal. 449, 456.) "In this State, from the earliest times, quitclaim deeds have been in every-day use for the purpose of transferring title to land, and have been considered as effectual for that purpose as deeds of bargain and sale."[4] (*Graff v. Middleton* (1872) 43 Cal.341, 344.) Indeed, as early as 1854, this court recognized and held a quitclaim deed to effect a transfer of "all the right and title of the grantor." (*Sullivan v. Davis* (1854) 4 Cal. 291, 292; see *Wholey v. Cavanaugh* (1891) 88 Cal. 132, 135; *Rego v. Van Pelt* (1884) 65 Cal. 254, 256; *Graff v. Middleton, supra*, 43 Cal. at p. 344; see also *Lawrence v. Ballou* (1869) 37 Cal. 518, 521.)

The phrase "remise, release and quit-claim" in the granting clause is thus not consistent with an intent to convey to the railway only an easement: The RLC held the property in fee simple; and the choice of the quitclaim deed form, with its established legal import, substantially reflects an intention to convey title in its

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[4] As with the use of "quitclaim," reference to "remise" and "release" generally signifies a relinquishment of all interest held by the grantor. (See Black's Law Dict., *supra*, p. 1454, col. 1 ["release"]; *id.*, p. 1458, col. 2 ["remise"].)

entirety.[5] (See *Estate of Rose, supra*, 23 Cal.App.2d at p. 688; *MacFarland v. Walker* (1919) 40 Cal.App. 508, 511-512.) Resolution of their heirs' claims cannot rest on this factor alone, however. As noted above, "[d]eeds are to be construed like any other contract and the intent of parties arrived at by a consideration of the whole instrument and not of detached clauses. [Citation.]" (*Whitcomb v. Worthing* (1916) 30 Cal.App. 629, 631; *Parks v. Gates* (1921) 186 Cal. 151, 154.) Examining the remainder of the conveyance, we find other provisions support the opposite conclusion: the grantor intended to limit the conveyance to an easement.

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[5] The heirs argue the quitclaim form was used only to disavow any warranty as to encumbrances in light of the mortgage held by Charles Silent. (See Civ. Code, § 1113.) However, on this point a different explanation appears equally plausible: At the time of the transaction, Civil Code section 1624 did not yet require a written recitation, in the deed or otherwise, by which the purchaser of real property agreed to assume an indebtedness secured by a mortgage. (See Civ. Code, § 1624, subd. (f), added by Stats. 1937, ch. 316, § 2, p. 695.) Instead, assumption of such an obligation "may [then] be made orally or in a separate instrument; it may be implied from the transaction of the parties, or it may be shown by the circumstances under which the purchase was made, as well as the language used in the agreement." (*Hopkins v. Warner* (1895) 109 Cal. 133, 138; *Andrews v. Robertson* (1918) 177 Cal. 434, 438-439; *Hibernia Sav. etc. v. Dickinson* (1914) 167 Cal. 616, 621-624.) In this case, "the transaction of the parties" and "the circumstances under which the purchase was made" included having Charles Silent sign as a grantor, thereby reflecting his implicit agreement to forbear further enforcement of his mortgagee interest.

The most significant counterpoint is the deed's multiple references to "right of way."[6] (See Civ. Code, § 801.) In *Highland Realty Co. v. City of San Rafael* (1956) 46 Cal.2d 669, 678, this court noted "the general rule...that 'in construing contracts and deeds for railroad rights of way such deeds are usually construed as giving a mere right of way, although the terms of the deed would be otherwise apt to convey a fee. [Citations.]'"[7] (See also *Parks v. Gates, supra*, 186 Cal. at p. 154.) This observation reflects the broad view of many jurisdictions

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[6] The heirs emphasize this language and cite cases from other jurisdictions for the proposition the quitclaim of a "right of way" conveys only an easement. These out-of-state authorities bear little, if any, relevant to our inquiry, which must parse every provision in search of intent including the quitclaim deed form itself. Moreover, one may readily note opinions from jurisdictions holding a quitclaim conveyed a fee interest under similar language. (See, e.g., *Arkansas Imp. Co. v. Kansas City Southern Ry. Co.* (1938) 189 La. 921 [181 So. 445]; see also, *post*, fn. 8.) In the final analysis, we must remain focused upon this particular conveyance, considering all the terms chosen by these parties, as evidence of their intent.

[7] *Highland Realty Co. v. City of San Rafael, supra*, is distinguishable principally because in that case the deed was given to settle a pending condemnation action in which the railroad could have acquired an easement only. The deed mirrored the language of the eminent domain complaint as well as a court order authorizing the railroad to take possession of the right of way. Not surprisingly under the circumstances, this court concluded the conveyance transferred a limited interest, i.e., "exactly that which the railroad sought" in condemnation. (46 Cal.2d at p. 676.) In the context of this case, it is thus unnecessary to assess whether it remains the "general rule" that the grant of a railroad right of way conveys only an easement. (But see *Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 355-356.)

"that when the granting clause of a deed declares the purpose of the grant to be a right of way for a railroad the deed passes an easement only, and not a fee with a restricted use, even though the deed is in the usual form to convey a fee title." (*Swan v. O'Leary* (1950) 37 Wn.2d 533, 537 [225 P.2d 199, 201]; see generally Annot., Deed to Railroad Company as Conveying Fee or Easement (1966) 5 A.L.R.3d 973, 1013-1024.)[8] The parties thus

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[8] In his dissent, Justice Mosk cites Annotation, Deed to Railroad--Fee or Easement (1941) 132 A.L.R. 142 as well as numerous decisions from other jurisdictions in support of various points of his argument that the deed conveyed an easement only. In their specifics, most out-of-state cases are of marginal relevance to this grantor's intent because each arises from a particular matrix of facts, which generates its own individual rationale. Some also depend upon policy or other considerations not pertinent to our evaluation. For example, some states expressly regulate property holdings by railroads. (See, e.g., *City of Oakland v. Schenck* (1925) 197 Cal. 456, 466 [by statute railroads in Illinois may not hold land as ordinary owner]; *East Alabama Railroad Co. v. Doe* (1885) 114 U.S. 340, 352 [policy derived from Alabama Constitution requiring "just compensation" limits railroads to "only a right to use for its purposes" and not absolute title]; *Ross, Inc. v. Legler* (1964) 245 Ind. 655 [199 N.E.2d 346, 348] [policy considerations do not favor permitting railroads to acquire rights of way in fee simple]; *Abercrombie v. Simmons* (1905) 71 Kan. 538 [81 Pac. 208 210] [legislative restrictions on scope of property interests acquired by railroads]; *State v. Union Electric Co. of Missouri* (1941) 347 Mo. 690, 696-697 [148 S.W.2d 503, 505-506] [statute permitting street railway company to acquire right of way by grant did not include power to acquire fee].) By contrast in California, although the law contains some statutes expressly governing certain railroad activities (see Pub. Util. Code, § 7501 et seq.), it has never circumscribed the nature of the property interests they may acquire. (*Id.*, § 7526; see *Midstate Oil Co. v. Ocean Shore R. R. Co.* (1928) 93 Cal.App. 704, 707; cf. *People v. Thompson* (1954) (continued...)

appear to have drawn the terms of their deed to include two material but conflicting provisions, with "remise, release and quit-claim" reflecting an intent to convey a fee simple interest and reference to "right of way" indicating an easement.

Compounding the ambiguity, courts have also concluded "the term 'right of way,' when applied to railroads, canals, and similar instrumentalities, has not exact, well-defined meaning, but often is susceptible of a twofold signification. It is used indiscriminately to describe, not only the easement, or special and limited right to use another person's land, but as well the strip of land itself that is occupied for such use. This, at any rate, is the case when the term is with respect to railroads. [Citations.]" (*Anderson v. Willson* (1920) 48

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[8](...continued)
43 Cal.2d 13, 19.)

More to the point, other out-of-state opinions, in their own particulars, support the determination the railway obtained a fee estate. However, their citation would simply provoke an endless and ultimately inconclusive volley of decisional "authority" purportedly vindicating each conclusion. We thus agree with the response of the Washington Supreme Court in *Swan v. O'Leary, supra*, 37 Wn.2d at page 535 [225 P.2d at page 200]: "The parties have cited and analyzed many cases, and have referred us to the annotation in 132 A.L.R. 142. The authorities are in hopeless conflict. They cannot be reconciled, because their authors approach the subject from different standpoints and give different weight and significance to the various factors entering into the various instruments of conveyance under consideration. About the only common ground that can be found is that the intention of the parties to the conveyance is of paramount importance and must ultimately prevail in a given case. (See, e.g., *Parks v. Gates, supra*, 186 Cal. at pp. 154-155.) These same observations apply equally to the superseding annotation at 6 A.L.R.3d 973 and cases cited therein.

Cal.App. 289, 295; *People v. Thompson, supra*, 43 Cal.2d at pp. 19-20; *Parks v. Gates, supra*, 186 Cal. at p. 155; *Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at p. 354; *Concord & Bay Point Land Co. v. City of Concord* (1991) 229 Cal.App.3d 289, 295; *City of Glendora v. Faus* (1957) 148 Cal.App.2d 920, 926; *Ocean Shore Railroad Co. v. Doelger* (1954) 127 Cal.App.2d 392, 399; see generally 5 Miller & Starr, Current Law of Cal. Real Estate, *supra*, § 15:17, pp. 441-442; Annot. Deed to Railroad Company as Conveying Fee or Easement, *supra*, 6 A.L.R.3d 973, 977; Black's Law Dict., *supra*, p. 1191.)[9]

We therefore turn to the statutory rules governing the interpretation of deeds to determine if they contain an answer to the stalemate.[10] To begin, the law presumes "[a] fee simple title is...intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended." (Civ. Code, § 1105; *City of Long Beach v. Marshall* (1938) 11 Cal.2d 609, 613.) This precept applies without distinction to quitclaim deeds (see *Carlson v. Lindauer* (1953) 119 Cal.App.2d 292, 306; *MacFarland v. Walker, supra*, 40

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[9] Thus, for example, in *Midstate Oil Co. v. Ocean Shore R. R. Co., supra*, 93 Cal.App. at page 708, the conveyance referred to "said right of way," which the reviewing court held did not limit the interest acquired by the railway company to an easement. Measuring the deed by its own terms, the court found instead it conveyed title in fee simple. (*Ibid.*; see *Faus v. City of Los Angeles* (1961) 195 Cal.App.2d 134, 141; *Palmer v. Los Angeles, etc. Ry. Co.* (1921) 55 Cal.App. 519, 521; *Hannah v. Southern Pac R. R. Co.* (1920) 48 Cal.App. 517, 521.)

[10] All cited statutory provisions were enacted in their present form in 1872.

Cal.App. at p. 512) and supports the finding of a fee conveyance. Civil Code section 801 tends to favor a contrary finding: "The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: [¶] ... [¶] ... The right-of-way...."

Other provisions generally sustain a fee interest. "If several parts of a grant are absolutely irreconcilable, the former part prevails." (Civ. Code, § 1070.) The quitclaim deed form itself would seemingly constitute "the former part" and thus assume privacy over subsequent inconsistent references to "right of way" is also less definite than "remise, release and quit-claim." (See Civ. Code, § 1067.) "Where there is an asserted modifying or limiting clause in a deed, if such clause be of doubtful import, the fee contemplated by the granting clause of the deed will not be cut down. [Citation.]" (*Litten v. Warren* (1936) 11 Cal.App.2d 635, 637; *Castro v. Tennent, supra*, 44 Cal. at p. 258.) The general rule also provides "[t]hat doubtful clauses in the deed are to be construed most strongly against the grantor, and as favorably to the grantee as the language, construed in the light of the surrounding facts, will justify." (*Castro v. Tennent, supra*, 44 Cal. at pp. 257-258; Civ. Code, § 1069; *Hager v. Spect* (1878) 52 Cal. 579, 582; *Salmon v. Wilson* (1871) 41 Cal. 595, 608.)

Although these statutory principles tend to weight the "fee" side of the calculus, we find them neither individually nor collectively dispositive of the parties' intent, the ultimate interpretative touchstone. Thus, we must examine the remainder of the document to assess whether any other provisions, singly or in combination, assist our task. (See *Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at pp. 353-

354.) In this effort, we bear in mind that "since the language of each instrument is sui generis, no bright-line rules of construction are available to us to aid in this endeavor. 'Analysis of cases on this subject makes it abundantly clear that it is impossible to lay down an invariable and universal rule of construction. [Citation.] Every transaction must be considered individually.' [Citation.]" (*Id.*, at p. 353, quoting *Basin Oil Co. v. City of Inglewood* (1954) 125 Cal.App.2d 661, 664 (opn. by Mosk, J.); see also *Eldridge v. See Yup Company* (1860) 17 Cal. 44, 51; fn. 8, *ante*.)

Following the initial reference to "right of way," the deed recites that it is "for the construction, maintenance and operation of a steam railroad...." In some instances, courts construe language relating to an intended purpose as indicative of a limited conveyance, although this construction generally prevails when there is some qualification such as "*only* for the construction, etc." That is, if prescriptive and thus restricted, a statement of purpose evidences an easement; if merely descriptive and thus unrestricted, the grant is considered not inconsistent with a fee.[11] "[T]he vast majority of

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[11] See, e.g., *Yuba Inv. Co. v. Yuba Consol. G. Fields* (1920) 184 Cal. 469, 475 (no express provision limiting grantee's use to particular purpose--fee conveyed); *Pellissier v. Corker* (1894) 103 Cal. 516, 517 ("for the sole purpose of"--easement created); *Machado v. Southern Pacific Transportation Co., supra,* 233 Cal.App.3d at pages 357-359 (grant "'for a right of way for a standard gauge railroad'"--fee conveyed); *Johnson v. Ocean Shore Railroad Co.* (1971) 16 Cal.App.3d 429, 434 ("for railroad purposes only"--easement); *City of Glendora v. Faus, supra*, 148 Cal.App.2d at page 926 (grant "for railroad purposes only"--easement); *Basin Oil Co. v. City of*

(continued...)

cases hold the transfer of a fee title is not vitiated solely for the reason that the deed contains a clause declaring the purpose for which it is intended the granted premises shall be used. This is particularly indicated where such purpose will not inure specially to the benefit of the grantor and his assigns, but is in its nature for the general public, and where there are no other words indicating an intent that the grant be void if the declared purpose is not fulfilled." (*Basin Oil Co. v. City of Inglewood, supra*, 125 Cal.App.2d at p. 664.)[12] Nevertheless, as with the term "right of way" itself, in this instance reference to purpose tends as much to obscure as to clarify the parties' intent.

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[11] *(...continued)*
Inglewood, supra, 125 Cal.App.2d at pages 664, 662 ("unlimited and unqualified" grant for "public street or right-of-way"--fee conveyance); *Tamalpais etc. Co. v. N.W. Pac. R. R. Co.* (1946) 73 Cal.App.2d 917, 928-929 ("'for uses and purposes aforesaid and none other'"--easement); *Cooper v. Selig* (1920) 48 Cal.App. 228, 229 ("'for the purposes of a public road'"--fee conveyed); see Restatement of Property, section 471, comment d, at page 2964; cf. *Estate of Rose, supra*, 23 Cal.App.2d at page 688 (absence of reference to future contingency in quitclaim deed "indicate[d] a present transfer of any interest the owner might have in the property at the time of the conveyance" without qualification of the estate transferred); *Midstate Oil Co. v. Ocean Shore R. R. Co., supra*, 93 Cal.App. at page 708 (deed failing to limit railroad company's use conveyed fee).

[12] Even words of limitation are not dispositive; in one early case this court found the grantee acquired a fee estate notwithstanding a recital in the deed that the "'conveyance of these lands is made for railroad purposes only.'" (*Behlow v. Southern Pac. R. R. Co.* (1900) 130 Cal. 16, 18; see also *City of Long Beach v. Marshall, supra*, 11 Cal.2d at p. 613.)

The deed further recites that "the right of way for the construction, maintenance and operation of a steam railroad, [is] *upon[,] over and along the following tract and parcel of land"* and *"over and through* the lands of the grantors . . . ." (Italics added.) This language in the nature of an appurtenance appears to limit the railway to a right of passage and exclude title to the land beneath. (See *Highland Realty Co. v. City of San Rafael, supra*], 46 Cal.2d at p. 678.) Subsequently, however, the deed refers to "a strip of *land*" 100 feet in width and sets forth a detailed legal description in metes and bounds, which "contain[s] an area of 32.46 acres of *land*, more or less," according to its terms. (Italics added.) References to "land," particularly in conjunction with precise and technical designation of the location, generally indicate an intention to transfer the entire estate not just a limited right to pass over the property. (See *Moakley v. Blog* (1928) 90 Cal.App. 96, 98-99.)

Other indicia conforming to an intent to convey a fee include the grantor's reservation of a space for a warehouse, which would be inconsistent with retaining any larger estate in the property. "[W]hen an interest is 'reserved,' the entire fee title is transferred to the grantee and the grantee grants back a new interest to the grantor." (5 Miller & Starr, Current Law of Cal. Real Estate, *supra,* § 15:18, p. 445; see *id*., § 15:5, p. 403 ["By definition an easement is necessarily an interest in the land of another."].) The deed also identifies itself as "[t]his grant," which "is made upon [various] condition[s]" failure of which would cause the right of way "to revert" to the RLC. "[A]n easement...does not 'revert' to the grantor, it is simply extinguished. [Citation.]" (*Concord & Bay Point Land Co. v. City of Concord, supra*, 229 Cal.App.3d at p. 295.) Hence, this language also implies

a complete rather than partial transfer of interest in the property. (See *City of Long Beach v. Marshall, supra*, 11 Cal.2d at p. 613; *Schlageter v. Cutting* (1931) 116 Cal.App. 489, 498; Civ. Code, § 1105.)

The nominal consideration ($1.00) militates to the contrary (see *Tamalpais etc. Co. v. N.W. Pac R. R. Co., supra*, 73 Cal.App.2d at pp. 927-928; Rest., Property, § 471, com. f, at p. 2966), although, assuming the recitation in the deed reflects the actual bargained for exchange, the grantor may well have had more interest in the relative benefits it expected to derive from the railway's presence. (See *Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at pp. 359-360; *Concord & Bay Point Land Co. v. City of Concord, supra*, 229 Cal.App.3d at pp. 296-297; see also, *ante*, p. 20.)

The document in question does not refer to an easement. "In construing the instrument we cannot overlook the fact that if the grantors really intended to convey only an easement, they could have easily so expressed that purpose. [Citations.] [¶] Their failure to do so must be considered together with the presumption that a fee simple title passed (Civ. Code, § 1105) and the rule that a grant is to be interpreted in favor of the grantee. (Civ. Code, § 1069)." (*Basin Oil Co. v. City of Inglewood, supra*, 125 Cal.App.2d at p. 666.) Nonetheless, the omission does not factor substantially in our equation since the parties possibly used "right of way" as an equivalent. By the same token, the deed does not contain any reference to a fee (cf. *ibid.*); but use of the quitclaim deed form may account for that.

Neither does the habendum clause shed particular light on our inquiry. Its terms are not inconsistent with the grant of a fee. (See *Concord & Bay Point Land Co. v. City of Concord, supra*, 229 Cal.App.3d at pp. 295-296;

Parks v. Gates, supra, 186 Cal. at p. 155.) But that conclusion somewhat begs the question in light of the qualification "subject however to and upon the terms and conditions aforesaid." As we have discussed, the "terms and conditions aforesaid" can variously be construed as evidence of either a fee or an easement; none are dispositive.

Finally, we note Charles Silent, the mortgage holder, as well as the president and secretary of the RLC signed the deed. Although there are other possibilities, this fact suggests the parties attempted to effectuate a complete and unqualified transfer of all rights and title to the railway. (See, *ante*, fn. 5.)

Having canvassed the four corners of the deed, we end our search frustratingly little more informed of the parties' intention than we began. Judging by the terms "remise, release and quit-claim" and "right of way," the grantor appears to have intended at one and the same time to convey to the railway the entire fee estate and a limited interest confined to an easement for railroad purposes. The remainder of the language is equally ambiguous, both supporting and contradicting one or the other conclusion. We thus turn to extrinsic evidence in the hope of enlightenment.

III

"It is well settled that a deed indefinite in its terms may be made certain by the conduct of the parties acting under it. [Citations.]" (*People v. Ocean Shore Railroad* (1948) 32 Cal.2d 406, 414.) In this regard, "[t]he test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the

instrument is reasonably susceptible. [Citations.]" (*Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.)

The evidence before the court includes several subsequent documents executed by the RLC dealing with its property including the portion deeded to the railway. Unlike the terms of the 1888 conveyance itself, these references to the railway's interest are virtually without qualification consistent with an intention to transfer the property in fee simple.

To begin, in 1897 the grantor and the grantee's successor along with Parvin Wright entered into an unrecorded indenture modifying the reversionary conditions of railroad operations. In reference to the 1888 conveyance, the indenture states the earlier "deed shall remain a *grant* as therein expressed." (Italics added.) This language suggests and comports with the conclusion the RLC considered full title had passed by "grant." (Cf. *Schlageter v. Cutting, supra*, 116 Cal.App. at p. 498.)

Commencing in 1896, the RLC initiated various transactions eventually to divest itself of its holdings by partition. These included corporate resolutions in 1896 and 1897, and 1897 shareholder agreement, and an 1897 trust deed. Significantly, among those involved in executing, and presumably preparing, these documents was Hugh W. Vail, who as secretary of the RLC had signed the 1888 conveyance and would have been knowledgeable as to the grantor's intent at that time. In all instances, the description "excepted" "that certain right of way...granted" to the railway as well as parcels of land deeded to Blanton Duncan and the option given Parvin Wright, i.e., all property subject to claim by others. Had the RLC conveyed only an easement to the

railway, that interest would simply have passed as an appurtenance with any subsequent transfer. (See *Moylan v. Dykes* (1986) 181 Cal.App.3d 561, 568.)

The partition also necessitate a quiet tile action in 1901 from which the RLC expressly excepted the railway's property. This proceeding is significant in two respects: First, the exception of the railway's property lying within the area at issue in the quiet title action indicates the RLC no longer considered it held any interest therein. If it had conveyed only an easement to the railway, it would most likely have needed and wanted to settle ownership of the underlying fee at that time.

Second, the typewritten complaint "except[s] from the lands" subject to the action "the strip of land" conveyed to the railway in 1888 with the metes and bounds description taken from the earlier deed. Beneath that description, the RLC's president, who verified the pleadings interlineated in his own hand "and being the lands conveyed to the [railway] by [the 1888 deed]." Moreover, not only does the complaint contain these specific references to "land," at no point does it identify the railway's holding as a "right of way." These representations were made by the RLC in a legal proceeding instigated to resolve title to relevant portions of its holdings; and the judgment incorporates them verbatim. As such, they stand as virtually incontrovertible evidence the grantor intended the 1888 deed to convey the property to the railway in fee simple. (Cf. *Anderson v. Willson, supra*, 48 Cal.App. at p. 295.)

Of equal significance, when the RLC dissolved as a corporation in 1903, the decree of dissolution reflected "that all of the property of said corporation has been disposed of." Taking this language at face value, we

must perforce find the railway acquired a fee, not merely an easement. The strip of land at issue had been "excepted" from the distribution to shareholders under the terms of the partition and hence had not passed to them in any form. The RLC had not otherwise divested itself of the interest but by deed to the railway in 1888. Therefore, it could not have concluded its corporate business with this representation unless it believed it had originally conveyed full title to the property by that transaction. Elsewise, we would have to conclude the RLC intended, contrary to the terms of the decree and after it ceased to exist as a corporate entity, to retain a fee estate in a narrow strip of land subject to an easement the duration of which no one could predict.

If not unreasonable, such a conclusion is at least implausible. (Cf. *Merchant v. Grant* (1915) 26 Cal.App. 485, 490 ["unreasonable" to hold grantors intended to retain ownership f land "which could have been of no possible use to them"].) The record contains no evidence the RLC, as a land development company, intended to maintain a continuing ownership interest it could reassert in the event railroad operations ceased.[13] (Cf. *Tamalpais etc. Co. v. N.W. Pac. R. R. Co., supra*, 73 Cal.App.2d 917.) Indeed, the purpose of the enterprise appears quite to the contrary since partition and distribution activities began within a decade after it

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[13] Notably in this regard, the conveyance did not result from condemnation proceedings in which the railway could only have acquired an easement. (See *Highland Realty Co. v. City of San Rafael, supra*, 46 Cal.2d 669; *City of Oakland v. Schenck, supra*, 197 Cal. at p. 466; former Code Civ. Proc., §§ 1238, 1239, subd. 2.)

purchased the 4,500-acre tract, and the corporation dissolved within less than 2 decades.[14]

Construing the conveyance as a fee also best effectuates the likely intent of the parties considering the broader context in which the transaction took place: "This was before automobiles were in common use and Manhattan Beach, strange as this now seems, was quite inaccessible to Los angeles, which had barely started its phenomenal growth. Until 1904, when the Pacific Electric Railroad was completed, the only means of transportation to Manhattan Beach was by the Santa Fe Railroad. Excursion parties were organized for prospective purchasers, and they were taken to the property by train." (*Manhattan Beach v. Cortelyou* (1938) 10 Cal.2d 653, 664.) The RLC's business was to sell property in this "quite inaccessible" location; only the presence of the railway could make such a venture economically feasible much less viable. Granting the railway full title rather than a limited interest would have been at least as consistent, if not more so, with achieving this goal. (Cf. *United Inv. Co v. Los Angeles etc. Ry. Co.* (1909) 10 Cal.App. 175, 184 ["enhancement of [land] values in the vicinity" due to railroad's agreed construction of road sufficient consideration for conveyance of fee interest to right of way].)

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[14] Although indirect evidence for our purposes, a 1901 agreement by the RLC to convey fee title to one John Merrill substantiates that it contemplated complete divestiture of its entire holding. That agreement covered in part sections 24 and 25 of the RLC's original tract, over which the railway's right of way passed. Relevant to our inquiry, it stated the conveyance "is intended to include . . . all lands owned" by the RLC in those sections.

We are unpersuaded the extrinsic evidence cited by the heirs supports their position in an 1896 deed between the RLC and Duncan Blanton, the description of the property conveyed includes a portion of the strip previously deeded to the railway. On this basis, the heirs argue the RLC considered it still retained the fee to the right of way. Neither the record nor logic sustains this conclusion. It would be unreasonable to find the RLC intended to retain full title to a narrow strip of land, which it then bisected by conveying a small portion in fee to Duncan Blanton but none to any others, not even the RLC shareholders in partition. More significantly, the Blanton deed itself expressly "reserv[es] therefrom 100 feet in width right of way of [the railway]."

The heirs also rely on expert testimony that the partition map did not include acreage or an appraisal value for the right of way in parcels transferred to the shareholders. This omission is hardly conclusive of the RLC's interest. At best, it indicates the property was not part of the distribution proceedings because some other party owned it; but that fact does not assist in identifying the other owner. To the extent this consideration has any relevance to our inquiry, it suggests a contrary conclusion to that drawn by their heirs. Since the RLC was in the process of partitioning and distributing its remaining holdings to the shareholders, it would be illogical to retain any interest, much less the fee to a narrow strip of meandering property subject to an easement not likely to be abandoned by the railway in the foreseeable future. This evidence is also consistent with the exception of the railway's right of way in other partition documents.

Finally, the heirs contend Santa Fe should be bound by representations during property tax assessment

litigation in 1954 and Interstate Commerce Commission abandonment hearings in 1982 that it only owned an easement. As the Court of Appeal in *Concord & Bay Point Land Co. v. City of Concord, supra*, 229 Cal.App.3d at page 296, observed, however, "a legal conclusion drawn [decades later] is not compelling evidence of what was intended by a grant made [at the turn of the century]" particularly since the original grantor took no part in the subsequent proceedings.

IV

"I, John of Gaunt
Do give and do grant
To Sir John Burgoyne
And the heirs of his loin
Both Sutton and Potton
Till the world goes rotten."[15]

The document before us lacks not only such brevity but more importantly such clarity of intent. Fortunately, the grantor's actions speak to us more loudly over the decades than its words. The extrinsic evidence of subsequent transactions unambiguously reflects the RLC considered it had already conveyed to the railway full title to the right of way strip of land in 1888 and had not intended to transfer a lesser estate.

As should be clear from the discussion, we do not find the instant deed a paradigm conveyance but rather to the contrary, requiring us to ferret out the parties' intentions by less direct and less preferable considerations. In reaching our conclusion, we emphasize that the peculiar facts of this case dictate the narrow, perhaps unique, basis of our holding. (Cf.

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[15] Anonymous.

Machado v. Southern Pacific Transportation Co., supra, 233 Cal.App.3d at p. 353 ["the language of each instrument is sui generis"].) Further, we reaffirm the importance of careful drafting to insure property transactions consistent with the parties intended and desired result. The court's only function and concern should be to effectuate their manifest intent; for, as we have reiterated, that must control.

DISPOSITION

The judgment of the Court of Appeal is reversed.

ARABIAN, J.*

WE CONCUR:

LUCAS, C.J.
BAXTER, J.
GEORGE, J.

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*Hon. Armand Arabian, retired Associate Justice of the Supreme Court, assigned by the Chairperson of the Judicial Council.

CITY OF MANHATTAN BEACH v. SUPERIOR COURT

S032448; S032449

CONCURRING & DISSENTING OPINION BY MOSK, J.

The question before us is whether a deed conveying "the right of way for the construction, maintenance and operation of a Steam Railroad, upon over and along [a] tract and parcel of land...over and through the lands of grantors" transferred an easement or a defeasible fee. The majority correctly conclude that the foregoing language shows a transfer of an easement to the grantee. But their ultimate conclusion that the deed conveyed fee title is erroneous. They reach that conclusion because they are unduly absorbed in certain other language in the deed and incorrectly conclude that it renders the deed ambiguous and hence subject to consideration of extrinsic evidence.

FACTS

On October 31, 1888, W. Dunn caused a deed to be recorded in the Los Angeles County land records:

"This Indenture made this 24th day of October 1888, by and between The Redondo Land Company, a corporation, and Charles Silent, a resident of the County of Los Angeles, State of California, parties of the First part, and

"The Redondo Beach Railway Company, a Corporation, party of the Second part.

"Witnesseth: That said parties of the First part for and in consideration of the sum of One Dollar to them in hand paid by said party of the Second part, the receipt of which is hereby acknowledged do by these presents remise, release and quit-claim unto said party of the second part the right of way for the construction, maintenance and operation of a Steam Railroad, upon over and along the following tract and parcel of land, situated, lying and being in the County of Los Angeles, State of California, and described as follows, to-wit, Being a strip of land of the uniform width of 100 feet, 50 feet thereof being on each side of an parallel to the center line of location of The Redondo Division of the California Central Railway, over and through the lands of grantors, situated in the N.W. ¼ of Sec. 19, T.3 S.R. 14 W.S.B.B.M.; The N.E. ¼ and S. ½ of Sec. 24; and the N. ½ and S.E. ¼ of Sec[.] 25 T.3 S.R. 15 W. of S.B.B.M.; said center line being more fully described as follows, to-wit: [legal description], containing an area of 32.46 acres of land, more or less.

"Said parties of the First part reserve to themselves and except from the operation of this conveyance for a ware-house and ware-house storage purposes, a space of 200 feet in length, lying next adjacent to and midway between the ends of the side track now constructed upon said right of way and extending to the next adjacent boundary line of said right of way for the full length of said 200 feet.

"This Grant is made upon condition that the side-track now constructed upon said right of way shall be maintained and shall be used as a Station to receive and discharge freight; that such convenient crossings, not less than four, shall be made and maintained, with sufficient cattle guards, at such point on said right of way, as may

be necessary for the full use and enjoyment of the lands adjoining said right of way, and so as to give access to and from the lands on either side thereof; that such culverts shall be constructed and maintained as may be necessary for the free passage of water across the same, and so located that the lands adjacent to said right of way will not be flooded on account of the roadbed of said railroad forming an embankment, and upon failure to comply with said conditions, or any of them, said right of way to revert to said parties of the first part and their successors in interest.

"To have and to hold all and singular the rights aforesaid unto said party of the second part and its assigns and successors forever, subject however to and upon the terms and conditions aforesaid.

"In Witness Whereof, the said The Redondo Land Company has caused these presents to be executed by its President and its Secretary and caused its seal to be hereto affixed, and said Silent has hereto set his hand and seal the day and year first above written."

"The Redondo Land Company.

"By, *D. McFarland*

"President.

"By, *Hugh W. Vail*

"Secretary.

"Chas. Silent [Seal]"

The Court of Appeal described the proceedings in this case: "The instant action was commenced on December 31, 1987, when real parties filed suit. Their fourth amended complaint alleged causes of action to quiet title, for inverse condemnation and ejectment and damages. Both the City and Santa Fe answered. The superior court trifurcated the issues of liability, heirship and damages. On December 23, 1992, the court issued its statement of decision on liability. It found that the right of way acquired by Santa Fe's predecessor via the 1888 deed was an easement; that Santa Fe's interest in the easement ceased upon its abandonment of the railway line; that the City's and Santa Fe's conduct with respect to [an agreement to sell the right of way] constituted a taking by inverse condemnation for which they were jointly liable; and real parties had no interest in that portion of the right of way extending into Hermosa Beach, such property having been conveyed in fee to Blanton Duncan by the [Redondo Land Company]."

The Court of Appeal further stated, "[b]oth the City and Santa Fe filed petitions for writ challenging the trial court's decision. . . ."

I

Interpretation of a deed ordinarily is a question of law that we undertake de novo. (*Faus v. City of Los Angeles* (1967) 67 Cal.2d 350, 360.)

The trial court found that "[t]he 'right of way' conveyed to the Redondo Beach Railway Company in the 1888 deed constituted an easement." It was correct.

"When a contract is reduced to writing, the intention of the parties is to be ascertained *from the writing alone,* if possible...." (Civ. Code, § 1639, italics added.) "*The language of a contract is to govern its*

interpretation, if the language is clear and explicit, and does not involve an absurdity." (*Id.*, § 1638, italics added.) "The cardinal requirement in the construction of deeds and other contracts is that the intention of the parties *as gathered from the four corners of the instrument* must govern." (*Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 352, italics added.) The foregoing rules are crucially important in the case of a recorded deed, for it provides public notice that successors in interest and innocent third parties may need to rely on for centuries. For that reason, whatever the parties may have intended, it is the language used in the resulting conveyance that must govern "if possible...." (Civ. Code, § 1639.)

Hence, if the language of a conveyance unambiguously states the nature of the interest conveyed, there is no need to turn to extrinsic evidence bearing on that question. (*Baker v. Ramirez* (1987) 190 Cal.App.3d 1123, 1132; cf. *Pacific Gas & E. Co v. G. W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33.) In fact it is highly undesirable to do so, because considering extrinsic evidence undermines the public's ability to rely on recorded notice of interests in land. Considering such evidence must be reserved for those instances in which "application of *pertinent rules of interpretation* to the face of the instrument leave is *genuinely uncertain* which of two or more meanings is the proper meaning." (*Siegel v. Hackler* (1957) 181 Kan. 316, 319 [310 P.2d 914, 917], italics added.)

It has been said that "[w]ords...do not have absolute and constant referents" (*Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co., supra*, 69 Cal.2d at p. 38), but that is probably least true of the venerable terms of art describing interests in land. So although we must

read the deed with an understanding of what its terms meant to drafters of railroad conveyances in 1888 (see *Smiley v. Citibank* (1995) 11 Cal.4th 138, 150, 151-153 [definition of term must be inferred from context of statute's enactment in 1864]), we do so aware of the ancient pedigree of such terms as "right of way."

When we adhere to the foregoing principles, it becomes plain on independent review that the 1888 deed conveyed an easement and that there is no need to consider extrinsic evidence to divine the meaning of the words therein.

The granting clause conveys an interest in land consisting of a "right of way" to build a railroad. For $1 the grantors did "remise, release and quit-claim...the right of way for the construction, maintenance and operation of a Steam Railroad, upon over and along [a] tract and parcel of land...over and through the lands of grantors...."

The foregoing language gave the railroad a servitude on land (Civ. Code, § 801) rather than an estate in it (*id.*, § 761). It was universally understood ta the time that such language conveyed only a right of way -- i.e., an easement (*id.*, § 801, subd. 4). Indeed, a railroad law treatise relied on similar uses of language in advising practitioners on how to write a deed conveying an easement as opposed to fee simple title. When drafting an "Ordinary Deed to Railroad Company, passing a Fee Simple" (Baldwin, American Railroad Law (1904) p. 609), the text should "grant, bargain, sell and confirm unto the...Railroad...a certain parcel of land...described as follows...." (*Id.* at p. 610.) To instead convey "only a Right of Way" (*ibid.*), the drafter is instructed to "[i]nsert in [the previously quoted text] in the granting clause, just before the description of the

land conveyed, a 'right of way for railroad purposes over and upon,' and add to the *habendum* clause, 'for use only for railroad purposes.'" (*Ibid.*)

As the majority's analysis may fairly be read to acknowledge, a conveyance of a "right of way" "over" the grantor's land is a conveyance of an easement. This must be so, because the language shows that the land company conveyed an appurtenant use to the railroad. (Civ. Code, § 801 ["right[s]-of-way" "may be attached to other land as incidents or appurtenances, and are then called easements"]; see *Corea v. Higuera* (1908) 153 Cal. 451, 454-456.) After all, "land cannot be appurtenant to land"; only a "thing incorporeal" can be. (*Harris v. Elliott* (1836) 35 U.S. (10 Pet.) 25, 54.) Hence the undeviating body of California law explaining that language of this type conveys an easement. (*Highland Realty Co. v. City of San Rafael* (1956) 46 Cal.2d 669, 676 (*Highland*) [grant of "'right of way for the construction and use of said Railroad upon, over and along a strip of land...described as follows...'" "conveyed...an easement, and nothing more"]; *Ocean Shore Railroad Co. v. Doelger* (1954) 127 Cal.App.2d 392, 394, 399-400 ["plaintiff was granted 'a surface right of way, for railroad purposes only, over' [a] 60-foot strip...upon certain conditions therein expressed" easement conveyed}; *Moakley v. Los Angeles Pacific Ry. Co.* (1934) 139 Cal.App. 421, 422, 425 [deed conveyed "'a right of way for railroad purposes over and along all that certain lot, piece or parcel of land'"; easement conveyed].)

This was the universal rule when the deed was recorded, although a variety of prepositional language was used. (*Atlantic & P.R. Co. v. Lesueur* (1888) 2 Ariz. 428 [19 P. 157, 158, 160, 1 L.R.A. 244] [grant of "'the right of way through the public lands...for the

construction of a railroad and telegraph'" conveyed "a grant of an easement as defined by the law" and "was not a grant of the fee"]; *Cincinnati, I., St. L. & C. Ry. Co v. Geisel* (1889) 119 Ind. 77 [21 N.E. 470] [deed to "'release, relinquish, and forever quitclaim to the...Railroad...the right of way for so much of said railroad, being eighty feet wide, as may pass through the following described piece, parcel, or lot of land'" conveyed an easement]; *Illinois Cent. R. Co. v. Houghton* 1888) 126 Ill. 233 [18 N.E. 301, 302, 1 L.R.A. 213] [dictum] [conveying, "'for the purpose of constructing, maintaining and operating thereon a...railroad..., the right of way over and through said tract'" granted an easement]; *Brown v. Young* (1886) 69 Iowa 625 [29 N.W. 941].) In *East Alabama Railroad company v. Doe* (1885) 114 U.S. 340, 342-343, 350, decided some three and one-half years before the indenture at bench was recorded, the court held that an 1860 indenture conveying "'unto the said railroad company...the right of way over which to pass at all times...and particularly for the purpose of running...thereon a railroad'" conveyed "merely a right of way for a railroad"; "[n]o fee in the land was conveyed" "[w]hat [the railway] acquired was merely an easement in the land...."

The rule did not appear to change in the decades following the recording of the deed. (*Incorporated Town of Ackley v. Central States E. Co.* (1928) 206 Iowa 533 [220 N.W. 315, 317] [deed operating to "'release to the said [railway] company the right of way through any lands I own'"; easement conveyed]; *Branch v. Central Trust Co.* (1926) 320 Ill. 432 [151 N.E. 284, 287] ["[t]he grant to a railroad company of a right of way over, through, and upon land described does not convey the fee to any part of the land described..."]; *Walker v.*

Illinois Central Railroad Co. (1905) 215 Ill. 610 [74 N.E. 812, 813-814] [deed to "'grant, bargain, sell...for the purpose of constructing, maintaining, and operating thereon a single or double track railroad...the right of way for the same over and through the following tracts or parcels of land...[description]'"; easement conveyed].)

The 1888 deed's unvarying and repeated use of the term "right of way" without reference to a conveyance of "land" or "title" is simply fatal to any conclusion that fee title was conveyed. "The general principle that a deed to a railroad company which conveys a 'right' rather than a strip, piece, parcel, or tract of 'land' (usually a right of way but occasionally the right or privilege of constructing, operating, or maintaining a railroad) must be construed as conveying an easement rather than a fee has been applied or recognized in numerous decisions." (Annot., Deed to Railroad--Fee or Easement (1941) 132 A.L.R. 142, 172-173.) "All authorities agree that the grant of a 'right of way' confers only an easement in the land." (*Right of Way Oil Co. v. Gladys City Oil, Gas & Mfg. Co.* (1913) 106 Tex. 94 [157 S.W. 737, 739, 51 L.R.A. 268]; see also Annot., Deed to Railroad--Estate Conveyed (1933) 84 A.L.R. 271.)

It is different, of course, when "land" or a "parcel" is conveyed. (*Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d 347, 351, 361 [deed granted a "'certain strip or parcel of land for a right of way for a standard gauge railroad'" and habendum clause referred to "'premises'" fee title conveyed]; *Concord & Bay Point Land Co. v. City of Concord* (1991) 229 Cal.App.3d 289, 293, 295 [deed conveyed "'certain property'" "'more particularly described as'" "'parcel three[,]'" a "'strip of land sixty (60) feet in width'";

"the deed clearly grants an estate in land"]; *Faus v. Pacific Electric Ry. Co.* (1956) 146 Cal.App.2d 370, 380, disapproved on another point in *Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 866, fn. 2 [deeds "*not* of a right of way 'upon, over, and along a strip of land[]'....were grants of the entire land for the purpose of use as a way for an electric railroad" (italics added)]; *Moakley v. Blog* (1928) 90 Cal.App. 96, 99 [deed conveying to railroad "'all that certain lot, piece or parcel of land...bounded and particularly described as follows'"; fee title conveyed].) But here, in sharp contrast, "[t]he deed literally, from beginning to end, provides for a 'right-of-way.' These words appear [eight] times therein." (*Rock Island, A. & L. R. Co. v. Gournay* (1943) 205 La. 125 [17 So.2d 8, 11], rehearing denied (1944) 205 La. 164 [17 So.2d 21] [holding easement conveyed].)

Finally, the provision of the 1888 deed that the right of way was to be used for a "a Steam Railroad" supports the conclusion that it transferred an easement. (*Highland, supra*, 46 Cal.2d 669, 676 ["'for the construction and use of said Railroad'"]; *Keokuk County v. Reinier* (1939) 227 Iowa 499 [288 N.W. 676, 677, 678] [grant "'for all purposes incident and necessary to the construction and operation of a railroad'" conveyed right of way rather than fee]; *Right of Way Oil Co. v. Gladys City Oil, Gas & Mfg. Co., supra*, 157 S.W. 737, 738 ["'for the purpose of constructing, operating and maintaining its railroad'"]; *Fitchburg R. Co. v. Frost* (1888) 147 Mass. 118 [16 N.E. 773, 775] ["'for railroad purposes only'"; easement conveyed]; see also Baldwin, American Railroad Law, *op. cit. supra*, p. 610 [drafter should "add to the *habendum* clause, 'for use only for railroad purposes'"].) Naturally, language of limitation

can also reveal that a defeasible fee was conveyed. (*Epworth Assembly v. Ludington & N. Ry.* (1926) 236 Mich. 565 [211 N.W. 99, 102] [deeds for "'railroad purposes'"; but "[i]n neither deed is the land conveyed for a right of way"].) Such is not the case here, however: a "right of way" was conveyed "for...a Steam Railroad...."

II

So far I believe that the majority and I largely agree. They lead themselves astray only when they begin to place undue emphasis on certain other language in the deed.

First, they conclude that because the term "quitclaim" appears in the indenture, a rule of construction supports the view that fee title was conveyed. What they fail to understand, however, is that any interest in land that can be conveyed by deed is conveyable by quitclaim deed. This includes an easement. (*Westlake v. Silver* (1942) 49 Cal.App.2d 476, 478-479.) It even includes a reversionary interest such as a right to recover possession on breach of condition subsequent. (*Thornton v. Middletown E. Corp.* (1937) 21 Cal.App.2d 707, 708-710; see Civ. Code, § 1046.)

It is true that the grantors in *Westlake* held no more than an easement. But cases construing quitclaim deeds by the apparent or stated holder of fee title as conveying an easement to a railroad are many. (*Estate of Rockafellow v. Lihs* (Iowa Ct.App. 1992) 494 N.W.2d 734, 735-736; *Veach v. Culp* (1979) 92 Wn.2d 570 [599 P.2d 526, 527-528]; *Vandalia R. Co. v. Topping* (1916) 62 Ind.App.657 [113 N.E. 421, 422-424] [construing statute]; *Cincinnati, H. & D. Ry. Co. v. Wachter* (1904) 70 Ohio St. 113 [70 N.E. 974, 975]; *Cincinnati, I., St. L. & C. Ry. Co. v. Geisel, supra*, 21 N.E. 470.) A somewhat standardized form appears to have been used for such conveyances.

Indeed, as plaintiffs explain with regard to defendants herein, the majority simply "confuse the *form* of the conveyance with the *interest* being conveyed." The term "quitclaim" has nothing to do with the latter. It has been stated that "[a] quitclaim deed transfers whatever present right or interest the grantor has in the property." (*Westlake v. Silva, supra*, 49 Cal.App.2d at p. 478.) But the term "whatever," with its connotation of uncertainty, is the key to understanding such declarations. If the vendor simply wishes to sell an interest in land "as is"; i.e., without right of possession by the grantee, warranty of title, or other covenants implied in certain grant deeds, a quitclaim deed is the proper instrument. (See 2 Miller & Starr, *op. cit. supra.*, § 6:12, p. 504), but may wish to divest himself or herself of it in exchange for some benefit or to avoid some detriment--e.g., in exchange for a nearby railroad, or to avoid being a defendant in a quiet title suit--without warranting title or making other assurances. If so, then a quitclaim deed is the device used. If "it has been often decided by this court that a quitclaim deed conveys the absolute fee-simple title if the party executing it had such title" (*Spaulding v. Bradley* (1889) 79 Cal. 449, 456), that is likely so because the grantor wished to eliminate his or her entire estate or interest, whatever it might be, without "mak[ing any] assurance to the grantee that he or she actually has good title to, or even any interest at all in, the property...." (6A Powell on Real Property (1995 ed.) ¶ 897[1][b], p. 81A-29.) Here, in notable contrast, the face of the deed shows unequivocally that only a right of way was conveyed.

Second, the majority make too much of the use of "land" in the deed. That instrument describes the right of way as "a strip of land of the uniform width of 100

feet" and as "containing an area of 32.46 acres of land, more or less." When the deed is read as a whole, it is clear that these definitional references are inconsequential. The right of way *is* a strip of land--it does not float in the air. The fact that an easement that consists of a burden on land is described in units of land measure does not transform it into a fee, as an appellate decision of this state has implicitly recognized. In *Moakley v. Los Angeles Pacific Ry Co., supra*, 139 Cal.App. 421, a right of way consisting of "'a strip of land 35 feet in width...containing 0.67 of an acre of land'" (*id.* at p. 422) was conveyed. The conveyance also provided that "said right of way and land [could] immediately...revert" (*id.* at p. 423), and correctly concluded that an easement was created (*id.* at p. 425).

Given the wealth of law explaining the meaning of the deed's repeated references to a right of way and its language of appurtenance, it cannot be said that "application of pertinent rules of interpretation to the face of the instrument leaves it *genuinely uncertain* which of two or more meanings is the proper meaning." (*Siegel v. Hackler, supra*, 310 P.2d 914, 917, italics added.) Neither the quitclaim nature of the conveyance nor its mentions of "land" create so great an ambiguity.

Other observations made by the majority require only brief comment.

The majority observe that the term "right of way" may refer to land itself rather than the use of land. That is true (*Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d 347, 354), but it is beside the point. In the 1888 deed no land was conveyed, but only a right of way for a railroad. That is the crucial distinction. "There is a vast difference between a grant for purposes of 'right of way' for a road and a grant of

land 'to be used for a road.' The latter grant may be entirely consistent with the conveyance of a fee-simple title..., but the grant of land as a right of way recognizes nothing but an easement." (*Parks v. Gates* (1921) 186 Cal. 151, 155.)

The majority further note that the right of way is given a precise legal description and its acreage is also described. Relying on *Moakley v. Blog, supra*, 90 Cal.App. 96, they conclude that when a deed includes a legal description of this type, it is evidence that a fee was conveyed. But *Moakley* is properly read as deciding that a fee was conveyed because the deed recited that the grantors conveyed to the railroad "'all that certain lot, piece or parcel of land...bounded and particularly described as follows....'" (*Ibid.*) The salient observation to be made about the 1888 deed's legal description and acreage of the right of way is that it describes not "'that certain lot, piece or parcel of land'" (*ibid.*), but instead the land "upon over and along" which the right of way extends. It appears not to have been unusual to describe the land across which an railroad easement extends, and that is what occurred here. (*Moakley v. Los Angeles Pacific Ry. Co., supra,* 139 Cal.App. 421, 422, 425 [deed conveyed "'a right of way for railroad purposes over and along all that certain lot, piece or parcel of land...bounded and particularly described as follows, to wit: a strip of land 35 feet in width the center line of which is described as follows:...containing 0.67 of an acre of land'"; easement created]; *El Dorado & Wessen Railway Company v. Smith* (1961) 233 Ark. 298 [344 S.W.2d 343, 344, 345] [conveying "'strip of land...over and upon the following described land [five 40-acre tracts are described]'" created easement]; *Rock Island, A. & L.R. Co. v.*

Gournay, supra, 17 So.2d 8, 10 [conveying "'strip of land...over and upon the following described land.... [¶] [legal description]...said right of way hereby conveyed containing 3.81 acres'" created easement (italics deleted)]; *Sherman v. Petroleum Exploration* (Ky.Ct.App. 1939) 280 Ky. 105 [132 S.W.2d 768, 770, 772, 132 A.L.R. 137] [conveying "'strip, tract or parcel of land for railroad right of way'" "'containing [2.2] acres, more or less'" created easement].)

The majority urge that certain language of reservation in the 1888 deed supports the view that fee title was conveyed. Their discussion, however, is incomplete. The deed both "reserve[s]" and "except[s] from the operation of this conveyance" "a space" "for a ware-house and ware-house storage purposes...." "Exception" and "reservation mean entirely different things, "though the terms are often used promiscuously" (*Lange v. Waters* (1909) 156 Cal. 142, 146): an exception limits the extent of the interest or estate conveyed, keeping the whole prior estate or interest in the grantor, whereas a reservation creates a new, lesser interest in a grantor conveying fee title. (See Miller & Starr, *op. cit. supra*, Easements § 15:18, pp. 444-445; see also *Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 38.) "An exception is always of some part of the estate not granted at all. A reservation is always of something taken back out of that which is clearly granted." (*Sears v. Ackerman* (1903) 138 Cal. 583, 586.) Thus it was inartful drafting to both "reserve" and "except" some land from the right of way. It is practical, however, to conclude that the parties intended to except from the right of way land for a warehouse, so that the land company would keep fee title to it unencumbered

by any servitude. In other words, they merely limited the size of the easement to a very slight extent.

The majority also suggest that the deed's reverter clause is evidence that a fee was conveyed. That is implausible.

An easement may be conveyed subject to conditions subsequent and extinguished if they occur. (*Lincoln v. Narom Development Co.* (1970) 10 Cal.App.3d 619, 622-623; *Dotson v. Wolfe* (Fla.Ct.App. 1980) 391 So.2d 757, 759; *University City v. Chicago, R.I. & P. Ry. Co.* (Mo. 1941) 149 S.W.2d 321, 326.) The deed contains three conditions requiring the right of way to be maintained so as to avoid diminishing the value of the adjoining land. By law the easement could be extinguished only under certain general conditions. (Civ. Code, §811.) Although the statute vaguely declares that one such condition is "the performance of any act upon either tenement, by the owner of the servitude, or with his assent, which is incompatible with its nature or exercise" (*id.*, § 811, subd. 3), the land company undoubtedly wished to require that specific conditions be met so that the right of way would not damage the value of adjacent land, and hence the deed provides that failing to provide proper infrastructure or maintenance would terminate the railroad's interest.

"Of course the word 'revert' in its technical sense as dealing exclusively with titles should not be used in conjunction with an easement." (*Brown v. Weare* (Mo. 1941) 152 S.W.2d 649, 655.) For "an easement...abandoned by nonuse or use outside its limitations does not 'revert' to the grantor, it is simply extinguished." (*Concord & Bay Point Land Co. v. City of Concord, supra*, 229 Cal.App.3d 289, 295.) But the inaccurate use of "revert" in a railway conveyance

appears to be widespread. (See *Brown v. Weare, supra*, 152 S.W.2d at p. 655.) Hence, a deed conveying a right of way rather than title to land may have a reverter clause, and though the term is misused, yet an easement is conveyed. (*Moakley v. Los Angeles Pacific Ry. Co., supra*, 139 Cal.App. 421, 422, 423, 425 [deed conveyed "'right of way for railroad purposes'" and provided that on abandonment "'said right of way and land shall immediately thereafter revert to said first parties'"; easement conveyed].) In *Rosecrans v. Pacific E. Ry. Co.* (1943) 21 Cal.2d 602, the deed conveyed a "right of way for a railroad across the real property therein described" (*id.* at p. 603)--i.e., an easement--and provided that "'upon...breach [of specified conditions] the right of way hereby granted shall revert to first party his heirs or assigns, and upon such breach, first party, his heirs or assigns shall have the right to enter upon said right of way and take possession thereof.[']" (*Id.* at p. 604.)

The majority mention that the deed nowhere uses the term "easement." It would, however, have been imprecise to do so. In addition to "[t]he right-of-way" (Civ. Code,§ 801, subd.4), many other types of appurtenant easements have been recognized in our Civil Code since 1872. These include the "right of pasture" (*id.*, subd. 1), the "right of taking water, wood, minerals, and other things" (*id.*, subd. 5), and even the "right of a seat in church" (*id.*, subd. 16). The majority hint that "easement" and "right of way" may be equivalent, but they are not--"right of way" is the more specific term, and to utilize it was better drafting.

In addition to the legal principles explicated above, it would not have been practical to convey fee title to the railroad. The parties' exhibits suggest that the strip was perhaps two or three miles long. A long

strip 100 feet wide meandering through others' adjacent land in what was remote territory (*Manhattan Beach v. Cortelyou* (1938) 10 Cal.2d 653, 664) would not have been more valuable if held if fee simple rather than used for a right of way: it was landlocked and to be marketable as subdivided parcels would have required, at a minimum, the creation of many ways of necessity. "[T]he shape of the tract, a 100-foot strip, is peculiarly suited to railway purposes and to little else." (*El Dorado & Wessen Railway Company v. Smith, supra*, 344 S.W.2d 343, 345.) The size and shape of the right of way supports the conclusion that an easement was conveyed.

III

Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co., supra, 69 Ca.2d 33, held that extrinsic evidence must be considered to interpret the term "property" in a contract (*id.* at p. 36) notwithstanding any claim that "the contract had a plan meaning" (*ibid.*). From that holding, the case drew broad conclusions regarding the propriety of considering, "at least [as] a preliminary" matter (*id.* at p. 39), extrinsic evidence when presented with a written transaction that appears to contain unambiguous terms.

Such aspects of *Pacific Gas & E. Co.* have been criticized as "cas[ing] a long shadow of uncertainty over all transactions negotiated and executed under the law of California." (*Trident Center v. Connecticut General Life Ins.* (9th Cir. 1988) 847 F.2d 564, 569.) In the same vein, in a dissent joined by two other justices, I have criticized the "emasculation of the parol evidence rule" in *Pacific Gas & E. Co. (Delta Dynamics, Inc. v. Arioto* (1968) 69 Cal.2d 525, 531 (dis. opn. of Mosk, J.).) "The problem," I stated, "is that which devolves upon members of the bar who are commissioned by clients to prepare a written instrument able to withstand future assaults....

The written word, heretofore deemed immutable, is now at all times subject to alteration by self-serving recitals based upon fading memories of antecedent events. This, I submit, is a serious impediment to the certainty required in commercial transactions." (*Id.* at p. 532.)

Nowhere are the foregoing criticisms more telling than in the case of a deed giving notice to the world of the boundaries and nature of ownership of a plot of land. As stated, a deed may need to provide such notice for centuries, and very precise terminology and syntax have been devised for that purpose. Hence, a conveyance of a "'right of way'" (*Highland, supra*, 46 Cal.2d 669, 676) transfers an entirely different interest in land from a conveyance of a "'certain strip or parcel of land for a right of way'" (*Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d 347, 351). To question the meaning of such precisely differentiated terminology on the basis of dubious extrinsic evidence is to undermine the reliability of notice on which the public depends.

Fortunately, *Pacific Gas & E. Co. v. G. W. Thomas Drayage etc. Co., supra* 69 Cal.2d 33, is distinguishable: it did not consider a recorded instrument that, using venerable terms of art, announced interests in land to the world. We need not rely on *Pacific Gas & E. Co.* in a case such as this. Instead we must firmly adhere to the rule that if the language of a conveyance unambiguously states the nature of the interest conveyed, there is not need to turn to extrinsic evidence bearing on that question. (*Baker v. Ramirez, supra*, 190 Cal.App.3d 1123, 1132.)

The majority's reliance on extrinsic evidence for their conclusion that the 1888 deed conveyed fee title does, however, require a response. It becomes apparent

that the extrinsic evidence sheds scant light on the nature of the interest conveyed.

It has been held that when there is "'no conflict' in such extrinsic evidence as has been introduced, 'we must make an independent determination of the meaning' of a legal instrument." (*Faus v. City of Los Angeles, supra*, 67 Cal.2d 350, 360.) The rule could be more precisely stated. If the nonconflicting extrinsic evidence consists solely of other written instruments such as contracts or deeds, we interpret their meaning and their effect on the 1888 deed de novo. If, on the other hand, the extrinsic evidence consists primarily of facts adduced through testimony at trial, we must defer to trial court findings that are based on such evidence, even if there appears to be no conflict, because the court is better positioned than are we to observe a witness's demeanor and discern his or her credibility. Testimony can be uncontroverted and yet be presented in a fashion that is unpersuasive for reasons not evident on a written record.

Turning to the extrinsic evidence presented:

The trial court found that "[e]xtrinsic evidence also supports, but is not necessary to, such construction [of the 1888 deed as conveying an easement]. Such extrinsic evidence includes: (a) the fact that in other deeds the Redondo Land Company clearly transferred fee interests but did not utilize similar language in the 1888 deed; [and] (b) the fact that the Redondo Land Company purported to convey property which included a portion of the subject right-of-way in the metes and bounds description and in the calculated acreage in a deed to Duncan...."

If extrinsic evidence were necessary to our conclusion, we would review the instruments transferring

fee interests de novo. The court was apparently referring to deeds conveying property to Blanton Duncan. Conveyances to him evidently occurred in 1895 and 1896. The record contains only transcriptions of the purported deeds and not the originals. In those transcriptions the Redondo Land Company conveys to him, respectively, "all those certain lots, pieces or parcels of land" and "all that certain lot, piece or parcel of land...." There does not appear to be a stipulation that these transcriptions faithfully reproduced the originals. On independent review, however, if we were to agree with the trial court that the language was materially different and illustrated that some years later the drafter knew how to convey a fee rather than an easement. (See *Moakley v. Blog, supra*, 90 Cal.App. at pp. 96, 99.)

The trial court's finding that the Redondo Land Company conveyed part of the right of way in a deed to Duncan should be reviewed for substantial evidence, for it is based on surveyors' expert testimony at trial. Substantial evidence in the record supports that finding: the surveyors testified that the legal description of the conveyance traversed the right of way.

The trial court found, "[w]ith respect to defendants' arguments based on extrinsic evidence, the unrecorded indenture of 1897...did not demonstrate a contrary intent in 1888 to convey more than an easement. Nor did it constitute a later conveyance to the railroad of an interest greater than an easement. [¶]... The quiet title judgment of 1901...and the pleadings in the various consolidated quiet title actions...do not demonstrate a contrary intent in 1888 to convey more than an easement. Nor do these exhibits demonstrate that the railroad ever obtained more than an easement interest."

On independent review, it is evident that the trial court ruled correctly in part and erroneously in part. The majority observe that the unrecorded 1897 indenture modifying the 1888 deed's infrastructure and maintenance conditions declared that the deed "shall remain a grant *as therein expressed*...." (Italics added.) What the deed expressed, however, was a grant of an easement. In fact, the 1897 indenture referred to "the right of way in said [1888] deed granted...." The 1897 indenture supports the view that an easement was conveyed.

On the other hand, an amended complaint in a 1901 action to quiet title to land owned by plaintiff Redondo Land Company excepted from the suit the land underlying the conveyance to the railroad under the 1888 deed. Defendants contend that if the company still held fee title to the land, it would have included it in the suit. On independent review, we may concede that this exception provides some extrinsic evidence for that view.

The parties also discuss what is purported to be a judgment in that action. However, their exhibits contain no copy of an original documents, but only a typed transcription. In the absence of a stipulation, we should not consider it to be evidence. Nor should we conclude that a memorandum of agreement regarding interests in land, apparently by the Redondo Land Company's shareholders, shows that a fee was conveyed in 1888. To the extent that the transcription of that memorandum contained in the exhibits is competent evidence of anything, it excepted "those certain parcels of land heretofore granted by the Redondo Land Company to Blanton Duncan" and "that certain right of way heretofore granted" to the railroad. That language, differentiating between "land" and the "right of way,"

does not show that the 1888 deed conveyed fee title. It suggests the contrary.

The foregoing items, to the extent they are competent evidence at all, are, as the Court of Appeal effectively concluded, trifling: they shed little light on the meaning of the 1888 deed. Perhaps sensing so, defendants emphasize a 1903 decree of dissolution of the Redondo Land Company. The decree states in part, "And it appearing further that all of the property of said corporation has been disposed of and that all of the business of said corporation has come to an end [¶] Now therefore it is ordered and adjudged that the said corporation, the Redondo Land Company, be, and the same is hereby dissolved, and its corporate existence ended...." (Capitalization altered.)

The Court of Appeal agreed to take judicial notice of the contents of the decree, but concluded that it was of "marginal" significance. Defendants insist that the 1903 decree shows not only that fee title was conveyed in 1888, but also that even if an easement was conveyed in 1888, the decree means that plaintiffs cannot now claim any title to the land.

This claim fails because it relies on evidence that the parties stipulated at trial would not be introduced. Apparently it came to the parties' attention after trial was concluded and while appeal was pending. However, at the beginning of trial, the parties bound themselves as to the corpus of evidence to be considered in this case by stipulating that "by the time each party rests in this case the parties will have offered into evidence all documents in the chain of title to the subject property or adjacent land that are pertinent to the decision of this case. [¶] The parties are unaware of any other documents. The court need not consider the possible

existence of other documents. Apart from the documents offered there are no others that the parties are aware of that bear on this case or are necessary for the court to consider in arriving at a decision on this case."

A fair reading of this stipulation is that the parties agreed to be bound by the documentary evidence presented at trial. Having entered into a stipulation, defendants may not present new evidence now. (See *Estate of Cooper* (1970) 11 Cal.App.3d 1114, 1119, 1122-1124.) The majority grant the request for judicial notice, but it should be denied.

As the Court of Appeal concluded, "construction of the deed does not require resort to extrinsic evidence." The material that exists, if competent or admissible evidence at all, "either does not support [defendants'] interpretation or is too attenuated to be of much relevance."

IV

Defendant Atchison, Topeka and Santa Fe Railway Company (Santa Fe) contends that the Court of Appeal erred in affirming the trial court's judgment that it was liable along with defendant city of Manhattan Beach (the city) in inverse condemnation for taking the land underlying the easement. Insofar as it concerns this point, Santa Fe's contention that the Court of Appeal's judgment should be reversed has merit.

In 1986 and 1989, in recorded documents creating and then modifying a "Park Acquisition Agreement," the city and Santa Fe agreed essentially as follows: Santa Fe wanted to develop 2.12 acres of land lying at one end of its right of way for a commercial project, and the city wanted to acquire the right of way for a recreational trial. Santa Fe agreed to convey to the city its interest

in the land over which the right of way ran within the city, except for the 2.12-acre parcel. The city agreed to pay $4.2 million, to give Santa Fe title to certain parcels, and to rezone the 2.12-acre parcel for commercial use. Santa Fe agreed to "indemnify...the city...from any claim...arising out of alleged defective title to any portion or parcel of railroad right-of-way sold...under this agreement" (capitalization altered) up to the sum of (1) the $4.2 million purchase price of the right of way and (2) the value of the parcels to which the city was giving it title. The parties agreed that if any claim of disputed title over the right of way was presented to the city, Santa Fe could begin, at its own expense, eminent domain proceedings in the city's name to acquire the claimant's interest. Finally, the city agreed to rezone the right of way for "Open Space Recreation."

At trial, virtually no evidence regarding the acquisition agreement was introduced. Nor was there much discussion of the point at closing argument. Nevertheless, in the trial court' statement of decision it determined, in essence, that the acquisition agreement showed that Santa Fe actively participated in taking plaintiffs' land and therefore it was liable under the authority of *Breidert v. Southern Pacific Co.* (1964) 61 Cal.2d 659.

Because the trial court based its determination largely (and probably entirely, given the dearth of evidence presented at trial) on the acquisition agreement, it decided a question that was either a question of law--the interpretation of a written instrument (*Faus v. City of Los Angeles, supra*, 67 Cal.2d 350, 360)--or was a mixed question of law and fact that was primarily legal. Its ruling should be subjected to independent review.

Under that standard, it appears that the trial court's interpretation of the agreement was erroneous. The acquisition agreement's provisions are designed to facilitate the transfer of the right of way from Santa Fe, as private seller, to the city as buyer, in exchange for which the former would be paid, given other land, and allowed to develop its 2.12-acre parcel. Santa Fe appears to be correct that nothing in the agreement shows that it took the land underlying the right of way for public use: if any entity did so, it was the city. Contrary to the trial court's and the Court of Appeal's reasoning, the acquisition agreement created no joint project to develop the right of way: Santa Fe wanted to be rid of it. Although the agreement declares that Santa Fe "seeks to transform undeveloped property in [the city] into developed property in accordance with the plan for the Project," elsewhere the "Project" was defined as "all Project areas east of Sepulveda Boulevard"--i.e., the 2.12-acre parcel.

Article I, section 19, of the California Constitution provides: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation." As Santa Fe persuasively argues, a private seller cannot be liable in inverse condemnation merely because it conveys an interest in land to a municipality that converts the land to a public use. And that is all that the acquisition agreement provides for. It is true that in *Breidert v. Southern Pacific*

Co., supra, 61 Cal.2d 659, 662, we held that a railroad can be liable in inverse condemnation when it acts alongside the state to cause an interest in land to be condemned. But *Breidert* is distinguishable. There the railroad "was an active joint participant in closing [a] crossing" (*ibid.*) for the public benefit, creating a cul-de-sac where the crossing once gave property owners access to the network of public streets. No such "active joint participat[ion]" (*ibid.*) in creating a park appears in the acquisition agreement before us. The city alone is liable to plaintiffs for any taking of their land that may have occurred. Because plans for future appropriations of interest in land do not give rise to a cause of action in inverse condemnation (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 119-120), it is unnecessary to analyze liability for future takings of land or interests therein, including those accompanying or following future eminent domain or other proceedings.

CONCLUSION

Whether the 1888 deed conveyed a defeasible fee or an easement is not an arcane academic question. With railroad rights of way currently being converted to other uses, sometimes with the possibility of resuming their original function, it is of considerable practical importance to interpret deeds of this type correctly. (See 16 U.S.C. § 1247(d) [converting railroad rights of way to trails and preserving them for future use], 23 U.S.C. § 101(a), final par. ["term 'transportation enhancement activities'" includes "preservation of abandoned railway corridors"], 49 U.S.C. § 10906 [entitled "[o]ffering abandoned rail properties for sale for public purposes"].) The majority's interpretation is erroneous.

The Court of Appeal's judgment should be reversed insofar as it concludes that Santa Fe is jointly liable with the city of Manhattan Beach in inverse condemnation. In all other respects, its judgment should be affirmed.

MOSK, J.

CITY OF MANHATTAN BEACH et al. v. SUPERIOR COURT

S032448/S032449

DISSENTING OPINION BY KENNARD, J.

I agree with the view expressed by Justice Mosk in his concurring and dissenting opinion that the 1888 deed at issue here conveyed an easement, and not, as the majority holds, a fee interest. As Justice Mosk points out, both the language of the deed itself (conc. and dis opn. of Mosk, J., *ante*, at pp. 4-16) and the extrinsic evidence (*id*, at pp. 18-21) compel the conclusion that the interest conveyed was an easement.

Unlike Justice Mosk, however, I would hold liable for inverse condemnation not only defendant City of Manhattan Beach (the City), but also defendant Atchison, Topeka and Santa Fe Company (Santa Fe), because the latter was actively, and jointly with the City, involved in the condemnation of the property here in issue.[1]

The City and Santa Fe entered into a contract, the "Park Acquisition Agreement," to enable the City to develop a park on land involved here in exchange for certain benefits to be granted Santa Fe by the City. The

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[1] Because the majority concludes that Santa Fe had full legal title in fee simple, it does not address the question of whether Santa Fe is jointly liable with the City for inverse condemnation.

contract states in relevant part: "This Agreement is for the purpose of carrying out the Project. CITY seeks to obtain certain public benefits as set forth herein. SANTA FE seeks to transform undeveloped property in CITY into developed property in accordance with the plan for the Project." Under the agreement, Santa Fe promised to indemnify the City against claims to title of the property here in issue and reserved the right to initiate eminent domain proceedings in the City's name. The City, in turn, agreed to cooperate with Santa Fe in eminent domain proceedings; to rezone property acquired by the City as open space; to grant Santa Fe redevelopment rights to part of the property retained by Santa Fe; to rezone property held by Santa Fe to allow for commercial planned development; and to help Santa Fe acquire access to property retained by Santa Fe. Because the Park Acquisition Agreement reflects significant actions by both the City and Santa Fe, I would hold them jointly liable for the inverse condemnation. (*Breidert v. Southern Pacific Co.* (1964) 61 Cal.2d 659, 662 [railroad is proper party to inverse condemnation action if it was an active joint participant in taking property for public use].) This conclusion was also reached by the trial court and by the Court of Appeal.

I would affirm the judgment of the Court of Appeal.

KENNARD, J.

I CONCUR:

WERDEGAR, J.

APPENDIX B

Second Appellate District, Division Four, No. B073333
S032448
S032449

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED
JUN 19, 1996
Robert Wandruff Clerk

DEPUTY

CITY OF MANHATTAN BEACH, Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent
JOHN P. FARQUHAR Et Al., Real Parties in Interest and Companion Case

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Petition for rehearing DENIED

Mosk, J., Kennard, J. and Werdegar, J. are of the opinion the petition should be granted.

Chief Justice

IN THE

SUPREME COURT OF THE
STATE OF CALIFORNIA

TO THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION: FOUR

R E M I T T I T U R

CITY OF MANHATTAN BEACH	ATCHISON TOPEKA AND SANTA FE RAILWAY CO
PETITIONER	PETITIONER
VS.	VS.
LOS ANGELES COUNTY SUPERIOR COURT	LOS ANGELES COUNTY SUPERIOR COURT
RESPONDENT	RESPONDENT
SUPREME COURT NUMBER: S032448	SUPREME COURT NUMBER S032449
COURT OF APPEAL NUMBER: B073333	COURT OF APPEAL NUMBER: 073361
COUNTY: LOS ANGELES	COUNTY: LOS ANGELES
SUPERIOR COURT NUMBER: SWC96713	SUPERIOR COURT NUMBER: SWC96713

I ROBERT F. WANDRUFF, CLERK OF THE SUPREME COURT OF THE STATE OF CALIFORNIA, DO HEREBY CERTIFY THAT THE ATTACHED ARE COPIES OF THE ORIGINAL JUDGMENT NOW FINAL ENTERED IN THE ABOVE-ENTITLED CAUSE ON THURSDAY, THE 25TH DAY OF APRIL, 1996.

COSTS, IF ANY, SHALL BE AWARDED BY THE COURT OF APPEAL.

WITNESS MY HAND AND SEAL OF THE COURT,

THURSDAY, THE 20TH DAY OF JUNE, 1996.

ROBERT F. WANDRUFF
CLERK

SEAL

By: K. Wagovich
Deputy

APPENDIX C

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COURT OF APPEAL-SECOND DIST.
FILED
JUN 16, 1994
JOSEPH A. LANE CLERK
DEPUTY CLERK

CITY OF MANHATTAN BEACH, No. B073333

Petitioner,

v.

(Super.Ct.No. SWC 96713)
(William C. Beverly, Jr., Judge)

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent,

JOHN P. FARQUHAR et al.,

Real Parties in Interest.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

No. B073361

(Super.Ct.No.SWC 96713)

Petitioner,

(William C. Beverly, Jr., Judge)

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent,

JOHN P. FARQUHAR et al.,

Real Parties in Interest.

PETITIONS for writ of mandate. Denied.

Fadem & Douglas, Jerrold A. Fadem, Golbert, Kimball & Weiner, George Kimball, Latham & Watkins, David F. Faustman, Kim N.A. Richards, Albert Choi, Burke, Williams & Sorensen and Carl K. Newton, City Attorney, for Petitioner City of Manhattan Beach.

Hill, Farrer & Burrill, William M. Bitting, Benjamin B. Salvaty and Dean E. Dennis for Petitioner Atchison, Topeka and Santa Fe Railway Company.

No appearance for Respondent.

Sullivan, Workman & Dee, Roger M. Sullivan and Joseph S. Dzida for Real Parties in Interest.

This coordinated writ proceeding disposes of the petitions of the City of Manhattan Beach and the Atchison, Topeka and Santa Fe Railway Company (the

City and Santa Fe; sometimes jointly referred to as petitioners) that arise from an action referred to as petitioners) that arise from an action brought by John P. Farquhar et al. (real parties in interest), against the City and Santa Fe involving real parties' claim to a now abandoned railroad right of way running the length of the City and into the adjoining community of Hermosa Beach.

The relevant facts are as follows: In 1888, the Redondo Land Company (RLC) and one Charles Silent (Silent) conveyed to the Redondo Beach Railway Company, a predecessor of Santa Fe, a 100-foot wide right of way over 4,500 acres belonging to RLC and Silent in what is now the City. The deed provided that, in exchange for one dollar, RLC and Silent "remise, release and quit-claim unto [Redondo Beach Railway Company]...the right of way for the construction, maintenance and operation of a steam railroad, upon, over and along" the subject property. Further, the deed imposed certain conditions including the maintenance of a side track, cattle guards and culverts, providing that "upon failure to comply with said ocnditions, or any of them, said right of way to revert to said parties of the first part and their successors in interest." Finally, the habendum clause provided: "To have and to hold all and singular the rights aforesaid unto said party of the second part and its assigns and successors forever, subject however to and upon the terms and conditions aforesaid."

On June 6, 1896, a deed from RLC to one Blanton Duncan conveyed to him property now in the City of Hermosa Beach across which ran a portion of the right of way and included that portion.

In May 1897, RLC and its shareholders began to partition most of RLC's remaining land, excluding 463 acres optioned to one Parvin Wright by way of an unrecorded indenture. The unrecorded indenture, which was signed by the RLC, Wright and Southern California Railway Company (another of Santa Fe's predecessors) relieved Southern California Railway Company of its obligations regarding an existing station provided that it construct and maintain another station at Potencia. The document also abrogated and annulled such conditions as expressed in the 1888 deed upon the part of Redondo Beach Railway Company, the failure of which to perform created a reversionary interest in the RLC but otherwise provided that "the said deed shall remain a grant as therein expressed, free and discharged of all such conditions." On the same day it signed this unrecorded indenture with Wright, the RLC signed a grant deed with Wright for the land for the Potencia Station.

By August 1901, Parvin Wright had exercised his option only as to 40 of the 463 acres covered by his option. That same year, RLC filed a quiet title action as against certain Spanish land grant claimants to the remaining 423 acres included within the Wright option. A portion of the right of way passed through this land. The legal description of the property in the first amended complaint excepted both the right of way and the 40 acres previously transferred to Wright. A default judgment was entered in favor of RLC based on the legal description of the first amended complaint that excepted the right of way and the land conveyed to Wright.

In 1954, Santa Fe sued the City in an action to avoid an increased property tax assessment on the

grounds that it would not benefit from an improvement district that included the subject right of way. Santa Fe contended that it was the "owner of a right of way for railway purposes" across the affected property. The City conceded the point and in its findings of fact, the superior court found that Santa Fe's right of way was acquired "solely for the purposes of the construction, maintenance and operation of a steam railroad thereover. Said deed contained a reverter clause divesting [Santa Fe] of its interest thereunder in the event [Santa Fe] should cease using said parcels for railroad purposes."

In 1982, Santa Fe petitioned the Interstate Commerce Commission (ICC) proposing abandonment of the railroad line along the right of way. In its application before the ICC, Santa Fe represented that its use of the right of way was a "an easement for railroad purposes only." Santa Fe repeated this representation in a correspondence with the California Coastal Commission over the proposed abandonment. The proposed abandonment was approved and in 1986 Santa Fe removed its tracks.

In April 1986, the City and Santa Fe entered into a Park Acquisition Agreement (PAA) whereby Santa Fe quitclaimed the subject right of way for $4,200,000 and two residential properties.[1]

The instant action was commenced on December 31, 1987, when real parties filed suit. Their fourth amended complaint alleged causes of action to quiet

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[1] Further terms of the agreement we discuss in part III of this opinion.

title, for inverse condemnation and ejectment and damages. Both the City and Santa Fe answered.

The superior court trifurcated the issues of liability, heirship and damages. On December 23, 1992, the court issued its statement of decision on liability. It found that the right of way acquired by Santa Fe's predecessor via the 1888 deed was an easement; that Santa Fe's interest in the easement ceased upon its abandonment of the railway line; that the City's and Santa Fe's conduct with respect to the PAA constituted a taking by inverse condemnation for which they were jointly liable; and real parties had no interest in that portion of the right of way extending into Hermosa Beach, such property having been conveyed in fee to Blanton Duncan by the RLC.

Both the City and Santa Fe filed petitions for writ challenging the trial court's decision. We denied the petitions. The City and Santa Fe then filed petitions for review in the Supreme Court. By its orders of July 22, 1993, the Supreme Court granted the petitions and transferred the matter back to this court with directions to vacate our earlier orders denying mandate and to issue an alternative writ. We complied with that directive and issued an alternative writ.

I

The main issue before us is the propriety of the trial court's finding that the right of way conveyed by the RLC to the Redondo Beach Railway Company, Santa Fe's predecessor in interest, in the 1888 deed was an easement rather than a fee. The court found that its construction "is justified and supported by the intrinsic evidence of the language of the 1888 deed itself...." We agree.

Absent extrinsic evidence of meaning, the interpretation of a written instrument is a question of law resolution of which the appellate court undertakes independent of the trial court's construction. (*Stevenson v. Oceanic Bank* (1990) 223 Cal.App.3d 306, 315.) However, where no extrinsic evidence has been introduced, the interpretation of the contract made by the trial court will be accepted by the reviewing court if that interpretation is reasonable or is one of two or more reasonable constructions of the instrument. (*Pricket v. Royal Ins. Co. Ltd.* (1961) 56 Cal.2d 234, 237.)[2] "The cardinal requirement in the construction of deeds and other contracts is that the intention of the parties as gathered from the four corners of the instrument must govern. [Citation.]" (*Machado v. Southern Pacific Transportation Co.* (1991) 233 Cal.App.3d 347, 352.) The issue presented in the instant petition is not novel and there are various tools of construction by which a court may determine whether the conveyance of a right of way to a railroad was intended by the parties to be an easement or a fee.

Chief among these, "the general rule is that in construing contracts and deeds for railroad rights of way such deeds are usually construed as giving a mere right of way, although the terms of the deed would be otherwise apt to convey a fee. [Citations.]" (*Highland Realty Co. v. City of San Rafael* (1956) 46 Cal.2d 669, 678 [internal quotation marks omitted]; *Concord & Bay Point Land Co. v. City of Concord* (1991) 229 Cal.App.3d

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[2] Although extrinsic evidence was introduced (see, *infra*), the trial court found that it was not necessary to its interpretation which was based instead on the four corners of the deed.

289, 294; *Johnson v. Ocean Shore Railroad Co* (1971) 16 Cal.App.3d 429, 433.)[3] Additionally, the court considered "1) whether the reference to a 'right of way' is merely descriptive or acts to limit the grant; 2) the location of the limiting language 3) whether the deed contains references to the interest conveyed as a fee or easement; 4) whether the conveyance includes words of inheritance such as 'tenements,' 'hereditaments,' or which described interests in real property which are normally associated with a fee; 5) whether the interest is described as running 'over and across' the land of the grantor; 6) the reservation of rights to remove minerals or to cultivate the property in question; and 7) the amount of consideration paid." (*Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at p. 353.) When the 1888 deed is examined in light of these indicia, it is clear that, as the trial court found, what was intended was an easement.

For example, the phrase "right of way" is used no less than eight times in the deed to describe the interest being conveyed while the habendum clause refers to the "the rights aforesaid." By contrast, in the *Machado* case, the deed in question referred to a "strip or parcel of land for a right of way," and "premises." (*Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at p. 351.) In *Machado*, the reviewing court found that based on the use of these terms the interest

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[3] In *Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d 347, the court rejected this rule of construction as unsupported by authority. (*Id.* at pp. 355-361.) We cannot reconcile this conclusion with the language of our Supreme Court, quoted above, from *Highland Realty* and we must, therefore, respectfully disagree with *Machado* on this point.

conveyed was a fee rather than an easement. In distinguishing the earlier case of *Johnson v. Ocean Shore Railroad Co., supra*, 16 Cal.App.3d 429, where the description of purpose preceded the grant of land, the *Machado* court noted "the Machado deed, by placing the description of purpose after the language granting land, creates greater emphasis on the grant of land...." (233 Cal.App.3d at p. 357.) In contrast, in the instant case, there was no grant of land. Rather, what is granted is a right of way "over and through the lands of grantors..." indicating that the use of the phrase right of way is a limitation rather than merely descriptive. Moreover, the "over and through" language itself indicates that the interest conveyed was an easement and not the underlying land. (*Highland Realty Co. v. City of San Rafael, supra*, 46 Cal.2d at p. 678.)

Furthermore, where, as in the instant case, "the limitation upon a grant appears in the granting clause itself, and not merely in the habendum or any other parts, the limitation ordinarily operates to confine the grant to that of an easement. [Citations.] (*Johnson v. Ocean Shore Railroad Co., supra*, 16 Cal.App.3d at p. 433.) The absence of any language of inheritance also confirms that the conveyance was of an easement. (*Concord & Bay Point Land Co. v. City of Concord, supra*, 229 Cal.App.3d at pp. 294-295), as does the nominal amount of consideration paid (*Machado v. Southern Pacific Transportation Co., supra*, 233 Cal.App.3d at pp. 353, 359). We must conclude, therefore, that the interest conveyed by the 1888 deed was an easement only.

Petitioners fasten on the phrase "remise, release and quit-claim" in the deed and argue that, by its use of the word "quit-claim," the RLC intended to convey its

entire interest in the property, not merely an easement. By emphasizing this word at the expense of the rest of the deed, petitioners violate a fundamental rule of construction which requires that "[t]he whole of a contract is to be taken together, so as to give effect to every part if reasonably practicable...." (Civ. Code, § 1641.) Applying this rule supports the trial court's interpretation rather than petitioners.

Moreover, while it is true that ordinarily a quitclaim deed "passes whatever interest, legal or equitable, that the grantor possesses at the time of its execution" (*Howard Homes, Inc. v. Guttman* (1961) 190 Cal.App.2d 526, 530), it is also true that "[a] quitclaim deed of a particular interest in land will not operate as a conveyance of any interest other than that specified." (26 C.J.S., Deeds, § 118, p. 949, fn. and emphasis omitted.) While neither party has cited, nor has our own research disclosed, a California case on point, analogous authority from other jurisdictions supports the proposition that a quitclaim deed may convey no more than an easement for railway purposes.

For example, in *Estate of Rockafellow v. Lihs* (Iowa App. 1992) 494 N.W.2d 734, the granting clause of the deed in question purported to "give, remise, release, convey, and quitclaim [to the railroad]...for the purpose of constructing a railroad thereon and for all purposes [so] connected...the right-of-way for the said road over and through the...described tract...." (*Id.* at p. 735.) Similar language was repeated in the habendum clause. (*Ibid.*) The trial court granted summary judgment in favor of the estate of a property owner laying claim to the property described in the deed upon the cessation of railroad operations. The appellate court, citing the language in the granting clause that conveyed the right

of way for purposes of construction and use of a railroad, agreed that the deed "conveyed to the railroad only an easement for railroad purposes." (*Id.* at p. 736.) Similarly, in *Veach v. Culp* (Wash. 1979) 599 P.2d 526, the Washington Supreme Court concluded that a quitclaim deed that conveyed a right of way to a railroad conveyed only an easement. (Id. at pp. 527-528.)

These authorities are relevant to our earlier observation that a deed must be construed as a whole and the use of a particular word or phrase is not dispositive of the intent of the contracting parties. In the instant case, examination of the deed in its entirety compels the conclusion that the interest therein conveyed was an easement.

II

Although not necessary to its interpretation, the trial court went on to find that its interpretation of the deed was also supported by relevant extrinsic evidence. We emphasize that our construction of the deed does not require resort to extrinsic evidence. We discuss it only because it was addressed by the trial court.

The court cited evidence that other deeds issued by the RLC transferring conveying property used language clearly indicating transfer of a fee interest. It could be inferred, therefore, that had RLC wanted to transfer such an interest in the 1888 deed it could have done so. Additionally, the court referred to the RLC's transfer of property to Blanton Duncan that included the property underlying the right of way. The court also cited Santa Fe's reference to the right of way as an easement in its 1954 lawsuit against the City over a property tax assessment and in the abandonment papers it filed before the ICC and in correspondence with the California Coastal Commission.

Petitioners argue that certain extrinsic evidence favors their interpretation of the deed. Principally, they rely upon an 1897 indenture between the RLC, Santa Fe's predecessor railway, and Parvin Wright that required the railroad to maintain a station at Potencia and "abrogated and annulled" certain conditions to be performed by the railroad as set forth in the 1888 deed the failure of performance of which would have caused reversion. Petitioners claim this document constitutes a novation of the 1888 deed and by voiding the conditions and power of termination in that deed confirms that it was intended to convey a fee. They also refer to the 1901 quiet title action brought by the RLC against Spanish land grant claimants and involving 423 acres of land optioned to Parvin Wright. Both the verified complaint and the judgment exempt the right of way. Petitioners would have us infer that the reason the RLC did not seek to quiet title to this property was because it had conveyed it in fee to Santa Fe's predecessor by the 1888 deed.

The extrinsic evidence to which plaintiff refers either does not support its interpretation or is too attenuated to be of much relevance. The 1897 indenture falls into the first category as it was not a "novation" of the 1888 deed, as petitioners claim, but simply an abrogation of those conditions in the deed requiring the maintenance of a side tack, culvert and cattle guards. The 1901 lawsuit falls into the second category because it is too tangential to be of persuasive value in interpreting the 1888 deed.

Therefore, at best, these documents present a conflict in the evidence which was resolved by the trial court in favor of real parties. Under the rule of conflicting evidence, we are bound by any reasonable

construction by the trial court of the extrinsic evidence. (*Stratton v. First Nat. Life Ins. Co.* (1989) 210 Cal.App.3d 1071, 1084.) Petitioners must demonstrate either that the extrinsic evidence on which the trial court relied conflicts with any reasonable interpretation of the instruction or that the evidence does not support the court's interpretation. (*Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 340.) They have done neither, but instead simply as us to reweigh the evidence. This is not our function.[4]

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[4] Less than a week before argument, petitioners filed a joint request for judicial notice, or, alternatively, application to produce additional evidence on appeal. The material that was the subject of the request was a 1903 decree of dissolution of the RLC that states in part: "And it appearing further that all of the property of said corporation has been disposed of and that all of the business of said corporation has come to an end [¶] Now therefore it is ordered and adjudged [t]hat the said corporation, The Redondo Land Company, be, and the same is hereby dissolved, and its corporate existence ended[.]"

While we grant the request for judicial notice, it does not change the result we reach here, for two reasons. First, the proffered evidence is irrelevant to the central basis of the trial court's and this court's determination that the meaning of the 1888 deed can be adduced from the four corners of the document without reference to extrinsic evidence. Second, even to the extent we consider extrinsic evidence, this document is, at best, marginal. The 1903 Decree of Dissolution merely states in relevant part that it "appear[s]...that all of the property of said corporation has been disposed of...." This general language appearing in a document filed some 20 years after the 1888 deed does not overcome the careful analysis of that deed by which the trial court reached its conclusion that only an easement was taken.

III

Santa Fe argues that the trial court erred when it held the railroad and the City jointly liable in inverse condemnation.[5] Santa Fe contends that its involvement in the acquisition by the City of the property at issue was simply as a private seller.

The trial court, citing *Breidert v. Southern Pac. Co.* (1964) 61 Cal.2d 659, determined, however, that Santa Fe and the City were jointly responsible for and liable for the taking "due to their active joint participation" in the PAA. We agree.

In *Breidert*, plaintiff property owners sued the City of Los Angeles and Southern Pacific over the closing of a railroad crossing that cut off plaintiffs' access to public streets. Southern Pacific argued that it was not a proper defendant to the action. The Supreme Court rejected the argument: "Since defendant railroad was an active joint participant in closing the crossing, it is a proper party to the present litigation. [Citations.]" (61 Cal.2d at p. 662.)

In the instant case, the trial court found active joint participation by Santa Fe in the condemnation of the subject property for public use under the terms of the PAA. Specifically, the court cite the following terms of that agreement as indicative of Santa Fe's participation, its agreement to indemnity the City for a period of five years against any title claims affecting that portion of the right of way which it quitclaimed to the

---

[5] In its original petition, Santa Fe argued only that the 2.4 acres of land of the subject property which it retained was not being put to a public use and, therefore, was not properly the subject of the lawsuit. In its reply, Santa Fe has abandoned this narrow argument in favor of the broader argument which we have addressed.

City; its reservation of the right to initiate eminent domain proceedings in the event of a title claim affecting that portion of the right of way it retained and the City's agreement to cooperate with Santa Fe in prosecuting such a proceeding; agreement by the City that Santa Fe was to receive redevelopment rights to that portion of the property which it retained; agreement by the City to rezone that portion of the property for commercial planned development and to rezone the property conveyed to it as open space recreation; agreement by the City to help Santa Fe acquire access to the property Santa Fe retained; agreement by the City to lease back 85 parking spaces to Santa Fe on land quitclaimed by the railroad; and the recital in the PAA that "'is for the purpose of carrying out the Project. City seeks to obtain certain public benefits as set forth herein. Santa Fe seeks to transform undeveloped property in City into developed property in accordance with the plan for the Project.'" The court concluded: "The City and Santa Fe proceeded to implement their agreement as described above. Such course of conduct constitutes a taking of the subject property...by inverse condemnation.

We agree that under the terms of the PAA, Santa Fe was intrinsically involved in the condemnation of the subject property for public use and, therefore, is jointly liable with the City under that theory of liability. Santa Fe's argument that it derived no benefit from the public use which the City made of the property quitclaimed to it, is belied by the terms of the PAA which, for instance, require the City to rezone its adjacent property as open space recreation and lease back parking spaces to Santa Fe. It is clear, furthermore, from the recital quoted by the court that the "Project" to which the agreement

refers is a unified whole involving action by both the City and Santa Fe for its achievement.

For these reasons, the instant case is fundamentally different from *Cantu v. Pacific Gas & Electric Co.* (1987) 189 Cal.App.3d 160, upon which Santa Fe principally relies. In that case, a group of property owners sued PG&E in inverse condemnation for damages caused to their homes by a landslide attributable to a trench dug by the utility for gas and electric facilities. The trench was dug pursuant to a contract between PG&E and the subdivision developer. The property owners prevailed on the issue of inverse liability. On appeal, however, the judgment was reversed. The appellate court found that the installation of the trench for line extension service was a private project not a public one. In support of this conclusion, it referred to the fact that the agreement to install the trench was with the subdivision developers, that PG&E did not exercise any eminent domain rights nor did it require prior governmental approval or a declaration of

APPENDIX D

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

COURT OF APPEAL-SECOND DIST.
FILED
JUL 18, 1994
JOSEPH A. LANE CLERK
DEPUTY CLERK

CITY OF MANHATTAN BEACH, No. B073333

Petitioner, (Super.Ct.No. SWC 96713)
(William C. Beverly, Jr.,
v. Judge)

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent,

JOHN P. FARQUHAR et al.,

Real Parties in Interest.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent,

JOHN P. FARQUHAR et al.,

Real Parties in Interest.

No. B073361

(Super.Ct.No.SWC 96713)
(William C. Beverly, Jr., Judge)

ORDER MODIFYING ORDER [NO CHANGE IN JUDGMENT]

THE COURT:*

It is ordered that the opinion filed herein on June 16, 1996, be modified in the following particulars:

On page 3, lines 1 through 9 of the second paragraph are modified to read as follows:

In May of 1987, RLC and its shareholders began to partition most of RLC's remaining land, excluding 463 acres which the partition papers say were optioned to one Parvin Wright. Later in 1987, by way of an unrecorded indenture, which was signed by the RLC, Wright and Southern California Railway Company (another of Santa Fe's predecessors) Southern California Railway Company was relieved of its obligations regarding an existing station provided that it construct and maintain another station at Potencia.

On page 10, line 10 of the first full paragraph, add an apostrophe to the word "petitioners" so that sentence reads:

> Applying this rule supports the trial court's interpretation rather than petitioners'.

On page 12, line 2 of the third full paragraph, the word "or" should be added so that sentence reads:

> The court cited evidence that other deeds issued by the RLC transferring or conveying property used language clearly indicating transfer of a fee interest.

On page 14, line 9 of the first paragraph, the word "instruction" should read: instrument.

On page 14, last line of footnote 4, the number "20" should be changed to read: 14

There is no change in the judgment.

---

*WOODS (Arleigh), P.J., EPSTEIN, J., VOGEL (C.S.), J.

APPENDIX E

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE December 23, 1992 DEPT. SW A
HONORABLE William C. Beverly, Jr. Judge
B. Thompson Deputy Sheriff
Howell/Padilla Deputy Clerk
Electronic Recording Monitor
None Reporter

9:00 a.m. SWC096713
JOHN P. FARQUHAR, ET AL.
vs. COUNSEL NO APPEARANCES
ATCHISON, TOPEKA & SANTA FE, ET

NATURE OF PROCEEDINGS:

RULING ON STATEMENT OF DECISION

DEFENDANT'S OBJECTIONS TO THE PROPOSED STATEMENT OF DECISION ARE OVERRULED.

EXCEPT AS MODIFIED BY INTERLINEATION, THE PROPOSED STATEMENT OF DECISION PREPARED BY ATTORNEY FOR THE PLAINTIFF IS APPROVED, SIGNED AND FILED THIS DATE.

COUNSEL ARE NOTIFIED BY COPY OF MINUTE ORDER VIA U.S. MAIL THIS DATE AS FOLLOWS:

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PAGE 1 DEPT. SW A
MINUTES ENTERED
DECEMBER 16, 1991
COUNTY CLERK

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~~FILED~~
~~NOV 25 1992~~
~~JAMES H. DEMPSEY~~
~~CLERK~~
~~/s/~~
~~BY D. BERGIN, DEPUTY~~

FILED
DEC 23 1992
JAMES H. DEMPSEY, CLERK
/s/
BY C.FIELDS, DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JOHN P. FARQUHAR, et al.,
Plaintiffs,

v.

ATCHISON, TOPEKA
RAILWAY COMPANY, et al.,
Defendants.

Case No. SWC 96713

~~PROPOSED~~ STATEMENT OF DECISION

Pursuant to the Stipulation and Order Bifurcating Trial signed and filed on April 18, 1991, and the Order Bifurcating Issues re Chain of Descent and Distribution signed and filed on May 15, 1992, this case proceeded to bifurcated trial on the general issues of title and inverse condemnation liability. The court now renders its statement of decision in this first trial phase as follows pursuant to California Rule of Court 232.5.

THE 1888 DEED CONVEYED ONLY AN EASEMENT.

1. The parties stipulate and the evidence shows that the Redondo Land Company had fee title to

the subject property in 1888 when the indenture dated October 24, 1888, recorded at Book 508, Page 76 (the "1888 deed") was entered into between the Redondo Land Company, Charles Silent and the Redondo Beach Railway Company (predecessor to defendant Atchison, Topeka and Santa Fe Railway Company, referred to herein as "Santa Fe").

2. The parties stipulate and the evidence shows that, prior to the 1888 deed, Charles Silent had deeded fee title to property including the subject property to the Redondo Land Company in an indenture dated May 24, 1887, recorded at Book 227, Page 255 from Charles Silent to the Redondo Land Company.

3. The "right of way" conveyed to the Redondo Beach Railway Company in the 1888 deed constituted an easement. The preponderance of the evidence (taking into account all presumptions and rules of construction raised by the parties) supports such a construction.

4. Such a construction is justified and supported by the intrinsic evidence of the language of the 1888 deed itself which conveys "the right of way for the construction, maintenance and operation of a steam railroad, upon, over and along" a "tract and parcel of land" more particularly described in the deed.

5. Extrinsic evidence also supports, but is not necessary to, such construction. Such extrinsic evidence includes: (a) the fact that in other deeds the Redondo Land Company clearly transferred fee interests but did not utilize similar language in the 1888 deed; (b) the fact that the Redondo Land Company purported to convey property which included a portion of the subject right of way in the metes and bounds description and in the calculated acreage in a deed to Duncan (Exhibit 4, page

24-26); and (c) the fact that defendant railroad itself referred to the "right of way" as an easement in Case No. 626766 (Exhibit 127) and in abandonment papers filed with the Interstate Commerce Commission (Exhibit 53) and correspondence with the Coastal Commission (Exhibit 54.)

6.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXWCB
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXWCB
XXX With respect to intrinsic evidence in the form of the language of the deed, the fact that the 1888 deed contains "quitclaim" language does not change the effect of the 1888 deed as set forth in ¶3 above. The parties to the 1888 deed as set forth in ¶3 above. The parties to the 1888 deed intended and understood that only an easement was being conveyed. Furthermore, the fact that the 1888 deed conveys "the" right of way rather than "a" right of way does not change the effect of the deed.
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXWCB

7. With respect to defendants' arguments based on extrinsic evidence, the unrecorded indenture of 1897 (Exhibit BBB) did not demonstrate a contrary intent in 1888 to convey more than an easement. Nor did it constitute a later conveyance to the railroad of an interest greater than an easement.

8. The quiet title judgment of 1901 (Exhibit XX) and the pleadings in the various consolidated quiet title actions (Exhibit YY) do not demonstrate a contrary intent in 1888 to convey more than an easement. Nor do these exhibits demonstrate that the railroad ever obtained more than an easement interest.

ABANDONMENT

9. The parties stipulate and the evidence shows that Santa Fe abandoned the line of railroad over the subject property.

10. Defendants interest in the easement ceased and was extinguished upon Santa Fe's abandonment.

11. At trial, defendants dropped all contention that they had acquired title to all or part of the subject property by adverse possession, either before or after abandonment.

DEFAULT OF UNNAMED PARTIES.

12. Default of all unknown parties who might claim an interest in the subject right of way was entered per Exhibit 153.

THE DUNCAN PROPERTY.

13. A portion of the "right of way" conveyed in the 1888 deed runs across property conveyed by the Redondo Land Company to Blanton Duncan in the deed of 1896 recorded in Book 1160, Pages 139-140 (Exhibit 4, pages 24-26). Said portion of the "right of way" is referred to below as the "Duncan portion" and said deed is referred to below as the "Duncan deed." The Duncan portion is generally that portion of the subject property within the City of Hermosa Beach.

14. The court finds that the Redondo Land Company conveyed all its interest in the underlying fee to the Duncan portion along with the land described in the Duncan deed.

15. Accordingly, plaintiffs, who claim through the Redondo Land Company, have no right, title or interest in the Duncan portion.

TITLE.

16. The court finds that the preponderance of the evidence is that the Redondo Land Company did not intend to convey and in fact did not convey any interest in the underlying fee to the remainder of the subject right of way, other than the Duncan portion, when it conveyed land adjacent to the subject property. Such preponderance of the evidence includes: (a) the fact that all acreage calculations except for that in the Duncan deed were net of (i.e. did not include the area of) the subject right of way; and (b) the fact that the unrecorded instrument of 1897 (Exhibit 4, tab 9) was entered into by the railroad, the Redondo Land Company and Parvin Wright with respect to certain conditions in the 1888 deed, even though the Redondo Land Company had already transferred its interest in some adjacent land to persons who were not parties to the unrecorded instrument.

17. Title in the successors in interest of the Redondo Land Company and its shareholders (as listed in the partition documents set forth in items 5, 6, 7, 8 and 10 of Exhibit 4) is superior to that of the named and unnamed defendants with respect to the land more particularly described as follows:

> A strip of land in the city of Manhattan Beach, County of Los Angeles, State of California, being all of that certain 100-foot wide strip of land described in the indenture dated October 24, 1888 to the Redondo Beach Railway Company, recorded in Book 508 of deeds at page 76, records of said county, excepting however that portion of said strip within the boundaries of the land referred to more

> particularly described in that certain indenture (referred to above as the Duncan deed) dated June 6, 1896, from the Redondo Land Company to Blanton Duncan recorded in Book 1160 of deeds at page 139, records of said county.

Such title is in fee simple absolute. Neither defendant City of Manhattan Beach nor defendants Santa Fe have any right, title or interest in said property other than what they have acquired through inverse condemnation as discussed below.

EJECTMENT AND INVERSE CONDEMNATION.

18. In *Breidert v. Southern Pacific Co.* (1964) 61 Cal.2d 659, 662 (cited in plaintiffs' trial brief on inverse condemnation issues), the California Supreme Court held that where a railroad was an "active joint participant" along with a public entity in conduct giving rise to inverse condemnation, both parties could be jointly liable for the inverse taking.

19. In 1986, defendant City and defendant Santa Fe agreed upon a certain course of conduct designed in part to deal with title problems recognized by both parties (Exhibit 81, 83, 84, 85, II and LL). The agreed upon course of conduct was formalized in writing in the Park Acquisition Agreement (Exhibit 83) and related documents (Exhibits 84 and 85).

20. Under the terms of their agreement, among other things:

(a) Defendant Santa Fe quitclaimed its interest if any in the property described in Exhibit 85 to defendant City (Exhibit 83, ¶1.02A). Santa Fe (within certain specified limits) indemnified the City against any

title claims presented within five years (Exhibit 83, ¶1.01B, Exhibit 84).

(b) In the event of a title claim, defendant Santa Fe reserved the right to initiate eminent domain proceedings to acquire the interest, if any, of the claimant. Defendant City agreed to fully cooperate with defendant Santa Fe in prosecuting such eminent domain proceedings (Exhibit 83, ¶ 1.01B, Exhibit 84).

(c) Defendant Santa was to receive development rights to a portion of the subject property east of Sepulveda Boulevard (between Sepulveda Boulevard and Rosecrans Avenue) which Santa Fe would retain and not convey to the City (Exhibit 83, ¶1.02A, ¶1.03C).

(d) The City agreed to rezone that portion of the subject property between Sepulveda and Rosecrans as Commercial Planned Development (Exhibit 83, ¶1.03D). The City agreed to rezone the property conveyed to it in Exhibit 85 as Open Space Recreation (Exhibit 83, ¶ 2.02H).

(e) The City agreed to assist Santa Fe to acquire access to the land between Sepulveda and Rosecrans (Exhibit 83, ¶ 1.01C) for its planned development.

(f) The City agreed to least 85 parking spaces back to Santa Fe on the land quitclaimed by Santa Fe in Exhibit 85 back to Santa Fe (Exhibit 83, ¶ 1.03F).

(g) The Park Acquisition Agreement recites that it

> "is for the purpose of carrying out the Project. CITY seeks to obtain certain public benefits as set forth herein. SANTA FE seeks to transform undeveloped property in CITY into

developed property in accordance with the plan for the Project."

21. The City and Santa Fe proceeded to implement their agreement as described above. Such course of conduct constitutes a taking of the subject property (except for the Duncan portion) by inverse condemnation. Such taking occurred no earlier than and no later than October 7, 1986, when defendant City issues it Certificate of Acceptance of the property conveyed by Santa Fe (Exhibit 85, page 4). The public use has matured. The doctrine of laches therefore applies. Plaintiffs' remedies are therefore confined to the remedies available in an inverse condemnation case (just compensation, damages, interest, attorneys fees, litigation expenses and costs). Defendant City and defendant Santa Fe are jointly responsible and liable for the taking due to their active joint participation in the transactions set forth in Exhibits 81, 83, 84, 85 II and LL.

FURTHER PROCEEDINGS ON BIFURCATED MATTERS.

22. The case shall proceed to trial on the remaining bifurcated matters. Counsel shall promptly meet to agree on a schedule for exchange of appraisal data and reports and further trial.

23. Plaintiffs shall prove up their respective heirship positions in the chain of descent and distribution from the Redondo Land Company and its shareholders (as listed in items 5, 6, 7, 8 and 10 of Exhibit 4) in a bifurcated non jury proceeding held separately from the jury valuation trial.

DATE: 12/23/92 /s/ WILLIAM C. BEVERLY, JR.
WILLIAM C. BEVERLY, JR.
Judge of the Superior Court

Supreme Court, U.S.
FILED
OCT 28 1996
CLERK

No. 96-477

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

JOHN P. FARQUHAR, et al.,
Petitioners,

vs.

CITY OF MANHATTAN BEACH, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. When a state supreme court examines its own contract and property law to interpret a 19th century deed between its citizens for property within its borders, is any federal question presented for this Court to review?

2. When a Petitioner charges that a state supreme court has abused its own processes in order to avoid enforcing an asserted federal constitutional right, must the Petitioner demonstrate that it has raised and argued a federal constitutional issue? Does the fact that not one of the briefs filed by the Petitioner — including the Petition for Rehearing below — or the opinions rendered by the state courts raises any federal issues or even cites a provision of the United States Constitution belie this regrettable charge?

PARTIES TO THE PROCEEDING

Respondents are the City of Manhattan Beach, a municipal corporation, and Atchison, Topeka and Santa Fe Railway Company.

RULE 29.1 STATEMENT

1. The City of Manhattan Beach has no parent or subsidiary companies.

2. Santa Fe Parent Companies and Nonwholly Owned Subsidiaries:

Burlington Northern Santa Fe Corporation,
Burlington Northern, Inc.,
Santa Fe Pacific Corporation
Almeda Belt Line
The Belt Railway Company of Chicago
Central California Traction Company
Houston Belt & Terminal Railway
Kansas City Terminal Railway Company
The Oakland Terminal Railway
St. Joseph Terminal Railway Company
Sunset Railway Company
Texas City Terminal Railway Company
TTX Company
The Wichita Union Terminal Railway Company

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No. 96-477

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

JOHN P. FARQUHAR, et al.
Petitioners,
vs.
CITY OF MANHATTAN BEACH, et al.,
Respondents.

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ABSENCE OF JURISDICTION

This is a pure state law title and contract interpretation case. It always has been. It involves the 1888 deed to a railroad right-of-way. All of the state court litigation was focussed on the state law issues of:

- What interest was transferred by that deed?
- To whom was it transferred?
- Who owned the land in 1986?
- Who owns it now?

The Petitioners (Claimants) urged that they were the true successors in interest to the owners of the land that underlay some Santa Fe Railway tracks. Their claim was that, under California law, the 1888 deed transferred only an easement, leaving fee title in their predecessors. The Respondents (the City and the Railroad or Santa Fe) countered that, under California law, the quitclaim deed transferred fee title to the Railroad's predecessor so that when Santa Fe sold the property to the City in 1986, that sale properly vested fee title in the City.

The California Supreme Court held that the language of the deed was ambiguous, but that application of familiar and well-settled state rules of contract interpretation and examination of extrinsic evidence showed that fee title rather than an easement was transferred to the Railroad's predecessor in 1888. All as a matter of California law. All without any party raising any issues of federal law. All without any party even citing any provision of the United States Constitution.

The Just Compensation Clause, which the Claimants cite as their jurisdictional entre, played absolutely no part in this case other than to provide a potential remedy at the pleading stage in the event the Claimants were able to prove that they owned the railroad strip. The essential question, however, of ownership of the property was solely one of state law. That is the only issue that each of the courts below considered. The mere existence of a federal right to just compensation — *if* ownership is proven — does not create a substantial federal question or confer upon this Court jurisdiction over the state law title issues.

It would thus appear that this Court has no jurisdiction to review these state court determinations of state law issues (*e.g.*, *Henry v. Mississippi*, 379 U.S. 443, 446

[1965]), and the Petition concedes as much (Pet., p. 12). The matter should end there.

CONSTITUTIONAL PROVISIONS WERE NEITHER RAISED, BRIEFED, NOR DISCUSSED BY THE CALIFORNIA COURTS OR PETITIONERS

The Petitioners' quotation of the Fifth and Fourteenth Amendments (Pet., p. 3) marks the first mention of those provisions in the appellate briefing of this case. Attached as Appendices 1-5 are the tables of authorities from the briefs filed by the Petitioners in the California Court of Appeal and the California Supreme Court — *including the Petition for Rehearing in the California Supreme Court* (App. 5), where one could have expected the supposed issue of evasion of the Fifth and Fourteenth Amendments to have been raised if the Petitioners were serious about it. Instead, the Petitioners' arguments at all stages have been targeted wholly on state law contract and deed interpretation issues.[1]

Neither the California Superior Court, nor the California Court of Appeal, nor the California Supreme Court made any reference to the United States Constitution or any question of federal law. (Pet., Appendices A, C, E.) As the Superior Court and Court of Appeal ruled in favor of the Petitioners, one presumes the Petitioners are not charging those courts with using state law to evade federal constitutional issues. The California Supreme

---

[1] The one decision of this Court ever referred to by the Petitioners (*East Alabama R. Co. v. Doe*, 114 U.S. 340 [1885]) was a decision dealing with the meaning of the term "right-of-way" under Alabama property law and had nothing to do with any federal constitutional issues.

Court — which necessarily has plenary power to determine the content and application of California law — viewed the case in the same light as the courts below it: as a pure matter of California contract and property law.

STATEMENT OF THE CASE

The facts of this case are amply set forth in the decision of the California Supreme Court attached as Appendix A to the Petition. There is thus no need to burden this Court with another exhaustive examination of events that transpired more than a century ago in a far corner of the nation. It suffices to note that the California Supreme Court applied settled local precepts of contract, property, and conveyancing law to those facts and determined that Santa Fe acquired fee title to the land beneath its tracks in 1888 and transferred it to the City 98 years later to create a linear park and jogging trail through the center of town. The Claimants dissatisfaction with that result cannot make a federal case out of it.

REASONS FOR DENIAL OF THE PETITION

There are good reasons why this Court abjures cases based on state law. One of them is jurisdictional: this Court does not sit as a court of error to review state court decisions of state law. A related reason is that such cases tend to be mired in the legal and factual details of the locality. This case is a paradigm.

It was treated throughout all the proceedings below — in all courts and in all contexts — as a matter of the application of state contract and property law to a deed executed in 1888.

This is not a case in which the state court held that there was no property interest under state law that could qualify for protection under the Fifth and Fourteenth Amendments, although state courts possess the power to do so (*e.g., Fox River Paper Co. v. Railroad Commn.*, 274 U.S. 651, 657 [1927]).[2] All the California Supreme Court did was to determine who owned a recognized property interest — as a matter of California contract and conveyancing law. That is California's business. With respect, it is not the sort of thing with which this Court needs, or ought, to concern itself, or for which this Court's jurisdiction was created.

ABSTRACT LEGAL PROPOSITIONS DON'T DECIDE CASES

The Petition is based on a series of abstract legal propositions about the jurisdiction of this Court to determine whether a state court has made it appear that a case was decided on state grounds merely as a subterfuge to avoid having to deal with a federal issue and to prevent this Court from reaching it. There's nothing wrong with the propositions. They simply have no application here.

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[2] Thus, the Petitioners' discussion of the concept that "this Court has jurisdiction to revisit a state court decision that an asserted property right never came into existence . . ." (Pet., p. 13) is several leagues wide of the mark. Those cases deal with whether certain types of interest qualify as "property," not whether, as here, the plaintiff or defendant owns the property.

A

The Decision is Wholly Consistent With Prior California Law

The Claimants recognize that the existence of an adequate and independent state ground for the decision deprives this Court of jurisdiction to review the judgment. (Pet., p. 12.) They have thus sought to convince this Court that the decision below is not so based. To that end, they repeatedly take the California Supreme Court to task for supposedly reaching a decision "contrary" to its own earlier decisions (Pet., pp. 2, 13, 14), going so far as to assert that the court "jettisoned its own settled rules of construction . . . ." (Pet., p. 19.)

Not so.

First, the form of the deed. One of the keys to the decision below was that the parties used a quitclaim deed to transfer the property. Quitclaim deeds have been in active use in California since the State's founding. Indeed, in one of its earliest decisions, the California Supreme Court recognized that a quitclaim deed transferred "all the right and title of the grantor." (*Sullivan v. Davis*, 4 Cal. 291, 292 [1854].) And in the decade before the Redondo Land Company signed the deed at issue here, the California Supreme Court noted that quitclaim deeds "have been in every-day use for the purpose of transferring title to land . . . ." (*Graff v. Middleton*, 43 Cal. 341, 344 [1872].)

That law has remained constant through the present, and has always been understood to mean that the quitclaim form transferred whatever interest in the property the grantor owned. This is hornbook law:

> "A quitclaim deed transfers to the grantee *all of the right, title, and interest* which the grantor had at the time he executed and delivered the deed and which is capable of being conveyed by a deed. . . . Its sole function is merely to transfer *whatever interest* the grantor had in the described property at the time the conveyance was made. . . . The quitclaim deed transfers *whatever interest* the grantor may have in the property, whether legal or equitable." (2 Miller & Starr, *California Real Estate 2d*, Deeds § 6:12 at 504-505 [2d ed. 1989]; emphasis added.)

Second, the rules of interpretation. California deeds are interpreted like other California contracts. (Cal. Civ. Code § 1066.) The goal of contract interpretation is to determine and enforce the intent of the parties. (*Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co., Inc.*, 69 Cal.2d 33, 38 [1968].) Because the intent of the contracting parties is the key (Cal. Civ. Code § 1636), the surrounding circumstances are often critical to understanding. (Cal. Civ. Code § 1647.)

Where the contract is a deed transferring interests in real property, there is an overriding consideration which controls the more general rules of California contract interpretation:

> "A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended." (Cal. Civ. Code § 1105; *see*

Basin Oil Co. v. City of Inglewood, 125 Cal.App.2d 661, 664 [1954].)

Here, the California Supreme Court hewed to those standards, giving its full attention to determining the intent of the Redondo Land Company in 1888. When the words of the deed failed to provide clarity, extrinsic evidence was consulted:

> "Having canvassed the four corners of the deed, we end our search frustratingly little more informed of the parties' intention than we began. Judging by the terms 'remise, release and quit-claim' and 'right of way,' the grantor appears to have intended at one and the same time to convey to the railway the entire fee estate and a limited interest confined to an easement for railroad purposes. The remainder of the language is equally ambiguous, both supporting and contradicting one or the other conclusion. We thus turn to extrinsic evidence in the hope of enlightenment." (Pet., Appendix A, p. A 20.)

That approach is wholly in line with established California practice.

Third, right-of-way deeds. Although the Claimants cleave to their theory that earlier California cases held that rights-of-way are usually easements, and that the case law from virtually all other jurisdictions holds the same (Pet., pp. 16-17), the California Supreme Court's extensive analysis of the issue justified the conclusion it borrowed from the Washington Supreme Court:

> "The authorities are in hopeless conflict. They cannot be reconciled .... About the only common ground that can be found [in the right-of-way decisions from around the country] is that the intention of the parties to the conveyance is of paramount importance and must ultimately prevail in a given case." (Pet., Appendix A, p. A 13, fn. 8; quoting with approval from *Swan v. O'Leary*, 225 P.2d 199, 200 [Wn. 1950].)[3]

California right-of-way decisions have historically sought to determine the intent of the parties. As one of them put it, "we cannot overlook the fact that if the grantors really intended to convey only an easement, they could have easily so expressed that purpose." (*Basin Oil Co. v. City of Inglewood*, 125 Cal.App.2d 661, 666 [1954].)

The decision below is in harmony with the general, historical approach.

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[3] In their criticism of the California Supreme Court's conclusion that the authorities are in "hopeless conflict," it is noteworthy that the Claimants omit the fact that the court was quoting the conclusion of the Supreme Court of another state that had reached that conclusion several decades earlier, and they also omit the reasons why both the California and Washington Supreme Courts reached that conclusion: it's the facts. Each case turns on its own. There simply are no generic rules for right-of-way deeds. The Claimants may believe that to be unwise, but it's not unconstitutional. (Compare *Broad R.P. Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 541 [1930] ["this court will not inquire whether the rule applied by the state court is right or wrong, or substitute its own view of what should be deemed the better rule for that of the state court."])

B

Bashing Respected Retired Jurists is Improper

In what can only be described as a virtual tantrum, the Claimants urge that the author of the opinion below had it in for them for some reason and twisted the law (with the complicity of three of his colleagues) to eviscerate their federal rights (without ever mentioning them). (Pet., pp. 11, 19, 23, 25-27.)

But if Justice Arabian expressed concern at oral argument about people who foment litigation and convince those who would otherwise not have been in court to file lawsuits, he was doing no more than following the advice of Abraham Lincoln who admonished:

> "Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauled the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket?" (Lincoln, *Notes For A Law Lecture*, 2 The Collected Works of Abraham Lincoln 81 [Rutgers 1953].)

The Claimants' effort to cast aspersions on the subjective motivation of the majority of the court below based on a few questions by one of its members is beyond the pale. This Court — perhaps more than any other — is familiar with the intensity of questioning that can occur at oral argument. There is no excuse for the Claimants' charge. It would have better been left on the cutting room floor. Were this Court to entertain such

challenges, one quails at the thought of the impact on the incoming load of Petitions for Writ of Certiorari.

First. There is nothing in the record of this case to give rise to any due process concerns or issues of evasion of constitutional rights. This case was tried, decided, and appealed on the basis of California contract and property law. That's where everyone's focus was. That the decision went against the Claimants is no excuse for their charges of judicial misconduct.

Second. The Claimants sought a rehearing below and took advantage of the fortuitous retirement of the author of the opinion in this case and the former Chief Justice (also a member of the majority below) to openly plead with their replacements for either of them to join with the dissenters and decide the case in their favor. Neither of the new Justices would do so. Rehearing was denied.

Third, and most importantly. In their Petition for Rehearing, the Claimants did not voice any concern that their federal constitutional rights had been surreptitiously violated through the pretext of deciding a question of state law. In fact, as Appendix 5 shows, the Claimants failed so much as to cite any provision of the U.S. (or even California) Constitution. Plainly, the argument is a make-weight concocted belatedly to give some color to this petition which simply presents no federal issues.

THIS COURT'S JURISDICTION IS PROPERLY RESERVED FOR CASES RAISING SIGNIFICANT FEDERAL QUESTIONS

The party seeking certiorari has the burden to demonstrate this Court's jurisdiction. (*Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 651 [1942].) The Claimants have not done that.

First, no constitutional issue raised or decided below. The opinions below fail even to mention the constitution. The decisions deal with state law — of contract and property conveyancing. (Pet., App., A, C.) Where no constitutional issues are decided by the state court, the petitioner must demonstrate that a federal constitutional question was properly raised. (*Street v. New York*, 394 U.S. 576, 582 [1969].)

Lacking any constitutional decision below, one is left to determine whether a federal issue was raised. There is no showing that one was raised, and the briefs filed below belie it. Attached to this brief as Appendices 1-5 are the tables of authorities filed by the Claimants below. In none is there even a citation to the U.S. Constitution. Even in the Petition for Rehearing in the California Supreme Court, the Claimants failed to mention the constitution. They merely rehashed their rejected arguments about state contract and property law and unblushingly asked the two newest Associate Justices to vote contrary to the way that Associate Justice Arabian and Chief Justice Lucas had voted on this case before their retirement. If a constitutional issue was created by the California Supreme Court's decision, *that* was surely the time to raise it.

Second, adequate nonfederal grounds. When a state court decides a case on either a sole issue of state law or an alternative issue of state law, this Court has no

jurisdiction to review that decision as long as the state law determination is adequate and independent of the federal issue. (*Broad R. P. Co. v. South Carolina ex rel. Daniel*, 281 U.S. 537, 540-541 [1930]; *Michigan v. Long*, 463 U.S. 1032, 1037 [1983].) When the state court decides the case on substantive, rather than procedural, grounds, this Court's lack of jurisdiction is even more plain. (*Henry v. Mississippi*, 379 U.S. 443, 446 [1965].)

Here, the nonfederal grounds are not merely the dominant thing, they are the only thing. The state courts decided what sort of property interest was transferred by a deed executed and performed in California, and they interpreted an unclear deed in light of actions done in California contemporaneously with the deed — actions that included two turn-of-the-century proceedings in the California Superior Court. Based on that, the court decided who owned the property. How to interpret an unclear deed is a classic state law issue.

Third, no subterfuge to evade the U.S. Constitution. Although lacking any evidence in this case to support the plea, the Claimants have discovered a series of cases in which this Court has exercised jurisdiction to determine whether an ostensible state law ground of decision was merely a smokescreen for evading the protection of a federal constitutional right. (*E.g.*, *Michigan v. Long*, 463 U.S. 1032, 1037 [1983].)[4]

But the kinds of cases in which this Court examines state law decisions have historically fallen into recognizable categories: (1) cases in which the state court clearly relied on the federal ground even though it could

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[4] Even when engaging in such an examination, this Court generally defers to state court interpretations of state law. (*E.g.*, *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 654-655 [1942].)

have relied on the state ground (*Beecher v. Alabama*, 389 U.S. 35 [1967]); (2) cases in which the state court interpreted state law in light of what it believed to be a controlling precept of federal law (*Delaware v. Prouse*, 440 U.S. 648 [1979]); (3) cases in which the federal ground and the nonfederal ground are so interwoven that the state law issue is not independent (*Enterprise Irr. Dist. v. Farmers Mut. Canal Co.*, 243 U.S. 157 [1917]); and (4) cases in which state procedures have prevented the raising of a federal issue and the state procedures fail to serve a legitimate state interest (*Henry v. Mississippi*, 379 U.S. 443 [1965]).

This case is none of the above. It deals with state law of conveyancing. Here, the state courts decided who transferred what property interest as a matter of state law.

The contrast, for example, with *Michigan v. Long*, 463 U.S. 1032, 1037 (1983) is stark. There, this Court noted that "[t]he court below referred twice to the State Constitution in its opinion, but otherwise relied exclusively on federal law." In that context, this Court could conclude that the state ground was plainly not "adequate and independent" enough to sustain the judgment. (463 U.S. at 1043-1044.) Here, however, none of the courts below even mentioned any federal law (Pet., Appendices A, C, E), nor did any of the Claimants' own briefs (Appendices 1-5 hereto). Plainly, this is not a case in which state law was some sort of smokescreen to avoid dealing with properly raised federal issues.

Even if the Claimants were correct (which they are not) that the California Supreme Court changed the law in this case, that would not present a federal constitutional issue. This Court has repeatedly so held: *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 681, fn. 8 (1930) ["State courts, like this court, may

ordinarily overrule their own decisions without offending constitutional guaranties, even though parties may have acted to their prejudice on the faith of the earlier decisions."]; *Fox River Paper Co. v. Railroad Commn.*, 274 U.S. 651, 657 (1927) ["We are not concerned with the correctness of the rule adopted by the state court, its conformity to authority, or its consistency with related legal doctrine."]; *Demorest v. City Bank Farmers T. Co.*, 321 U.S. 36, 49 (1944) (Douglas, J., concurring) ["That is a question of New York law on which the New York court has the final say. It is none of our business — whether we deem that interpretation to be reasonable or unreasonable, sound or erroneous."]; *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 450 (1924) [". . . the mere fact that the state court reversed a former decision, to the prejudice of one party, does not take away his property without due process of law."]; *Patterson v. Colorado ex rel. Atty. Gen.*, 205 U.S. 454, 461 (1907) ["There is no constitutional right to have all general propositions of law once adopted remain unchanged. Even if it be true . . . that the supreme court of Colorado departed from earlier and well-established precedents to meet the exigencies of this case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed."].

In short, this Court is not a court of error. The Claimants have done no more than reargue their state law submission along with a plea that this Court reach a different decision on no better a basis than their partisan, subjective surmise as to the motivation of the author of the opinion below.

CONCLUSION

For all the fervor displayed in the Petition for Writ of Certiorari, the issues in this case do not even begin to give rise to a federal, much less a constitutional, question. The Petition presents only a state law issue, and in the end quarrels with the California Supreme Court's exercise of its prerogative in construing state conveyancing law.

Respondents pray that the Petition be denied.

DATED: October 25, 1996.

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APPENDIX 1

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Loretto v. Teleprompter Manhattan
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Publications

4 Witkin, Summary of Cal. Law (9th ed. 1987) Real Property, §§ 137 and 138 26

5 Miller & Starr, California Real Estate (2d ed. 1992) Easements, §15.1 21

5 Miller & Starr, California Real Estate Law (2d ed. 1992) Easements, §15:5, p. 401 29

7 Witkin, Cal. Procedure (3d ed. 1985) Judgment, §§ 305-311 42

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26 C.J.S., Deeds, § 118, p. 949 25

28 Cal.Jur.3d Easements and Licenses, § 47, p. 184-85. 29

28 Cal.Jur.3d, Railroads, § 66, p. 557. 45

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Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals And Writs (The Rutter Group 1992) ¶ 15:153, p. 15-38.3 through p. 15-38.4 5

Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals And Writs (The Rutter Group 1992) ¶ 8.67-8.68, p. 8-21 32

Eisenberg, Horvitz & Wiener, Cal. Prac. Guide: Civil Appeals And Writs (The Rutter Group 1992) ¶ 8.64, p. 8-20 32

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5 Witkin, Summary of Law, (9th ed. 1987) Torts, § 604 6

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53 Cal.Jur.3d, Railroads, § 66, p. 557. 6

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5 Miller & Starr, California Real Estate Law (2d ed. 1992) Easements, § 15:5, p. 401 19

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26 C.J.S., Deeds, § 118, p. 949 23

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Supreme Court, U.S.
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No. 96-477

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

JOHN P. FARQUHAR, et al.,
Petitioners,

vs.

CITY OF MANHATTAN BEACH, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA SUPREME COURT

PETITIONERS' REPLY BRIEF

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1. THE OPPOSITION DOES NOT AND CANNOT CONTEST THE FACT THAT THE PENCIL THIN 4-3 DECISION OF THE CALIFORNIA COURT ALLOWED THE CITY TO ACQUIRE THE SUBJECT PROPERTY FOR $3.4 MILLION LESS THAN THE CITY'S OWN FAIR MARKET APPRAISAL.

The opposition brief does not dispute the motive. The City of Manhattan Beach wanted this property for a park. The railroad wanted money. In 1985, the City appraised the piece it wanted at $8.4 million. In 1986, the railroad offered to quitclaim the property to the City in return for consideration valued at $5 million. The railroad could not get title insurance despite paying $45,000 in trying. The City knew that. It agreed to "work" with the railroad, nonetheless. The two agreed together to sit on the property for five years and then to file a quiet title action based on adverse possession.

It was only after petitioners came forward well before the five years ran, that the City and the railroad suddenly came up with their quitclaim argument. Before that (as discussed at pp. 8, 9 and 24 of the Petition for Certiorari), both the City and the railroad had consistently described the railroad's interest as a mere easement which would terminate upon abandonment.

None of these facts are disputed in the opposition brief.

Therefore, the issue in this case is whether the California Supreme Court has the power to rewrite

history and over a century of railroad right of way law in order to help the City complete the deal it made with the railroad without paying just compensation to the rightful owners of the property.

2. THE OPPOSITION MISLEADS THE COURT IN REGARD TO THE RAISING OF THE INVERSE CONDEMNATION ISSUE. THE TRIAL COURT AND THE COURT OF APPEAL RULED IN PETITIONERS' FAVOR ON THE ISSUE AND ALL THREE DISSENTING MEMBERS OF THE CALIFORNIA SUPREME COURT ADDRESSED IT. THE ISSUE WAS BRIEFED, DECIDED AND IS PROPERLY BEFORE THIS COURT.

The opposition contends that this case never involved any issues of constitutional law.

However, the trial court ruled that both the City and the railroad had inversely condemned petitioners' property. (Petitioners' App. E8-E10.) The Court of Appeal unanimously upheld that ruling. (Petitioners' App. C14-C16). Three dissenting members of the California Supreme Court wrote on the inverse condemnation issue. One (Justice Mosk) was of the opinion that only the City could be held liable in inverse condemnation. The remaining two (Justice Kennard and Justice Werdegar) were of the view that both the City and Santa Fe could be held liable in inverse condemnation. If the issue was never raised, why was it decided?

The operative Fourth Amended Complaint filed by Petitioners alleged a Second Cause of Action in Inverse Condemnation which stated:

> "(D)efendants were aware that Santa Fe did not have fee title to the subject property at the time of the transfer of its asserted interests in the subject property to the City of Manhattan Beach and . . . defendants did not have the right to possession or use of the subject property after its abandonment by Santa Fe. This physical taking of the subject property for public purposes without just compensation is in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, section 19 of the California Constitution." (Fourth Amended Complaint, ¶14, emphasis added.)

The inverse condemnation issue was also before the California Supreme Court although its four man majority ultimately sidestepped it.

Respondents attach, as appendix 4 to their opposition, the table of authorities from one of Petitioners' Briefs on the Merits to show that no federal issues were discussed and only one federal case was cited. However, Respondents ignore the fact that a separate brief on inverse condemnation issues was filed in Opposition to Petitioner Santa Fe. It stated:

> "To avoid duplication, the title issues are addressed in (the Brief on the Merits in Opposition to (Respondent) City of Manhattan Beach). That discussion is incorporated by reference in this brief. (Cal. Rules of Court, rule 14(a).) Santa Fe has also raised inverse condemnation issues in point IV(C) of its Brief that are not raised by the City. These remaining issues are addressed below." (Brief On The Merits In Opposition To Santa Fe, p. 1.)

That second brief directly addressed the inverse condemnation liability of Santa Fe and the City, as follows:

> "The City and Santa Fe jointly took (Petitioners') property through permanent physical occupation. They have denied (Petitioners') ownership, and have denied Real Parties any physical use of the property. The United States Supreme Court 'has almost invariably found that the permanent physical occupation of property constitutes a taking.' (Citing this Court's *Keystone* and *Loretto* cases). In cases where condemnors physically occupy property, the affected landowners have a categorical right to just compensation no matter how minute the physical intrusion and no matter how weighty the governmental or public interests furthered by the taking. (Citing this Court's *Lucas*

decision.)" (Brief On The Merits In Opposition To Santa Fe, p. 6-7.)

Respondent City appealed to the court to take the easy way out and ignore the inverse condemnation issues, by stating in its brief that:

> "If this Court agrees with the City that the 1888 deed conveyed fee simple title to the railroad, then further analysis is not needed." (City's Brief on the Merits, p. 32.)

The title issue was decisive on the inverse condemnation issue and Respondents staked their entire case on it. If Petitioners had title, they were entitled to just compensation. If the court ruled against Petitioners on the title issue, the City would have the property without paying fair market value. As stated by the City in its Brief:

> "Whether viewed as a quiet title action or an inverse condemnation action, the Claimants have a singular burden: they need to prove title." (City's Brief on the Merits, p. 36.)

Throughout, Petitioners consistently contended that their property had been taken without just compensation and that their title was supported by the overwhelming weight of existing California precedent.

The California majority, therefore, knew exactly what it had to do in order achieve a result that would

"protect" the City and its park, and, more importantly, allow the City to keep the park without paying just compensation to the rightful owners. It had to ignore its own precedents and make this case "sui generis." It had to force the square block of the result it wanted to achieve into the round hole of over a century of railroad right of law that called for a different outcome. It had to evade Petitioners' right to just compensation by rendering an opinion that would hold that Petitioners never had title in the first place. The opinion under dispute in this case is the result. Since this court has jurisdiction, it is necessary to address the merits of the instant Petition for Writ of Certiorari.

3. THE OPPOSITION BRIEF DOES NOT AND CANNOT CONTEST THAT THE CALIFORNIA MAJORITY IGNORED ITS OWN PRECEDENTS AND CALIFORNIA STATUTES IN ORDER TO ACHIEVE THE RESULT IT DESIRED IN THIS CASE.

The opposition notably does not cite a single, California Supreme Court railroad right of way case. It cites only a single California lower court right of way decision (*Basin Oil*) distinguishable because it involved a deed of land for right of way, not a deed of right of way. (See authorities cited in the Petition for Certiorari, pp. 14-16.) The author of that opinion (then Judge Stanley Mosk, now Associate Justice Mosk) dissented in the decision under dispute.

The opposition does not even discuss the overwhelming weight of decisional and statutory

authority in California that was detailed in the Petition for Writ of Certiorari (see pp. 14-24) but ignored by the California majority. That majority, and the opposition, wanted a result, not a decision based on prior precedent.

4. THE OPPOSITION DOES NOT AND CANNOT CONTEST THAT THE TRIAL COURT, THE COURT OF APPEAL AND THREE JUSTICES OF THE SEVEN JUSTICE SUPREME COURT EITHER WOULD HAVE RULED, OR DID RULE, IN PETITIONERS' FAVOR BASED ON EXISTING CALIFORNIA SUPREME COURT PRECEDENT.

A total of seven judges and justices (one trial court judge, three unanimous Court of Appeal justices and three dissenting state Supreme Court justices) all thought they were bound by existing precedent when they ruled in Petitioners' favor. It is these justices who have been "bashed" in this case, not the author of the opinion under the dispute.

5. THE OPPOSITION DOES NOT DISPUTE THAT THE AUTHOR OF THE STATE COURT'S OPINION MADE REMARKS AT ORAL ARGUMENT RELEVANT TO THE ISSUE OF EVASION BEFORE THIS COURT.

Nor does the opposition dispute that Justice Arabian made remarks during oral argument that are relevant to the question of whether an intent to evade existed. Instead, the opposition itself evades the issue

with a non sequitur, i.e., the notion that this court should ignore the Constitution out of some misguided sense of solicitude toward a state justice who has retired.

Petitioners do not impugn Justice Arabian's "good" intentions. He wanted to help the City keep its park and defeat the two "heir hunters" involved in this case. Petitioners do contend, however, that those intentions, though perhaps "politically correct,"[1] were constitutionally unsound. The Constitution cannot be evaded based on "good" intentions.

Petitioners again urge this Court to order the transcript of argument to be certified. Justice Arabian said much more than a few unkind words to the two amateur hobbyist heir hunters in this case. His statements are compelling evidence that a constitutional violation has occurred in this case. Petitioners have not said more because anything more would be "bashing." This Court can decide for itself after hearing the tape of argument whether it has any relevance.

6. THIS CASE IS ABOUT CONSTITUTIONAL RIGHTS, NOT SACRED COWS.

As a parting shot, the opposition dusts off the well-known and well-worn quotation from Abraham

---

[1] It is interesting that the dissent in this case (one liberal, one moderate and one conservative) all saw through their particular ideologies and followed precedent in an effort to protect private property rights against governmental intrusion. The "conservative" majority made the "politically correct" decision to help the City.

Lincoln (who first gained a degree of notoriety beyond the Illinois circuit as a railroad lawyer and litigator) to the effect that people who foment title disputes are evil.

The opposition does not and cannot dispute that the two out of 77 Petitioners who actually were heir hunters acted in a manner that was entirely legal under California law, as stated on p. 27, fn. 6 of the Petition for Writ of Certiorari. The majority opinion itself avoids any discussion of the legality of "heir hunting" and merely describes Petitioners Farquhar and Johnson, accurately, as "two hobbyist 'heir hunters.'" (Petitioners' App. A3, fn. 1.)

Petitioners, respectfully, will leave it to this Court to decide who fomented this litigation--the amateur heir hunters who found and helped the true owners, or the City and railroad who, through their "Park Acquisition Agreement," created a lawsuit that was waiting to happen.

DATED: November 1, 1996

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